

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1391

Heard at Montreal, Wednesday, July 10, 1985
Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Appeal of discipline assessed Machine Operator W. Smith 18 July 1984.

JOINT STATEMENT OF ISSUE:

The Company assessed the record of Machine Operator W. Smith with an amount of ten (10) demerit marks for being absent without leave on 17 and 18 July 1984.

The Union contends the grievor was authorized to be absent on the days in question.

The Company disagrees with the Union's contention.

FOR THE BROTHERHOOD:

(SGD.) G. SCHNEIDER
System Federation General
Chairman

FOR THE COMPANY:

(SGD.) J. R. GILMAN
FOR: Assistant
Vice-President
Labour Relations

There appeared on behalf of the Company:

T. D. Ferens - Manager Labour Relations, CNR, Montreal
J. Russell, - Labour relations Officer, CNR, Montreal
S. Williams - Labour Relations Officer, CNR, Winnipeg

And on behalf of the Brotherhood:

G. Schneider - System Federation General Chairman, BMWE,
Winnipeg
R. Y. Gaudreau - Vice-President, BMWE, Ottawa
T. J. Jasson - Federation General Chairman, BMWE, Winnipeg

AWARD OF THE ARBITRATOR

In this case the grievor, Machine Operator W. Smith was assessed ten (10) demerit marks for his absence from work without authorization on July 17 and 18, 1984. Rule 1.24 of Maintenance of Way Rules, Form 1233E reads as follows:

"Employees must not absent themselves from

duty, exchange duties with others, or engage substitutes without authority."

The grievor apparently was in Winnipeg on July 16, 1984 when he received a message from his mother that The Workman's Compensation Board wanted to speak to him with respect to an outstanding claim he had made. Rather than proceed to The Pas where he was expected to report for work on July 17, and 18, 1984, the grievor attended the interview at The Workmen's Compensation Board as well as attending to a pay dispute problem at the company's Winnipeg office. Because of the staggered train connection between Winnipeg and The Pas, the grievor could not attend work until July 19, 1984. The

- 2 -

company claims the grievor neither advised his supervisors of his intended absence nor his expected date of return and moreover he failed to secure its permission for absentsing himself from work.

The grievor's defence is based on the "assumption" that the company's permission for his absence would have been forthcoming once the company learned of the reason for his delay in reporting for work from the company's Clerk, J. S. Negraeve. Apparently on July 16, 1984, the grievor advised Mr. Negraeve (who apparently was attending to his pay dispute of his predicament and asked that he communicate his reasons for his failure to report to work to his superiors at The Pas. The grievor reasoned that because there was no telephone at the work site, the company's clerk would have more ready access in relaying the message by other means.

Unfortunately, Mr. Negraeve in his letter dated December 14, 1984 recalled a different conversation he had with the grievor. Apparently Mr. Negraeve understood the grievor to say that in the event that an inquiry was made of his whereabouts he (Mr. Negraeve) should advise the reasons for the grievor's delay. At no time did Mr. Negraeve understand that he had been directly asked to report the grievor's absence to his superiors. Why anyone should know or be aware of the grievor's presence in Mr. Negraeve's office however was not made clear to me at the hearing.

It seems to me that at the crux of this dispute is the grievor's assumption that he would necessarily have received the permission of his superiors had they been properly advised, as he "assumed" Mr. Negraeve would do, of the reasons for his absence. And in order to test the validity of that assumption it is necessary to review the basis of the alleged urgency of his meeting with the Workmen's Compensation Board in Winnipeg. The relevant document reads as follows:

"July 16, 1984

"Mr. Errol Flynn of the Workmen's Compensation Board, 333 Maryland St., Winnipeg, R3G 1M2, would like to interview you when you get into Winnipeg. Mr. Flynn's phone number is

786-9676.

Would you please advise Mr. Flynn either by phone or by letter when you expect to be in Winnipeg."

As can be readily discerned from the above Memorandum there was no urgency to the meeting at all. Mr. Flynn wanted to interview the grievor but quite clearly at the grievor's convenience. Indeed, a convenient time was intended to be arranged by telephone or letter "when you get'snto Winnipeg". The sense of the letter suggests that it was no ones' expectation that the grievor would meet with Mr. Flynn on the very same day that the request for an interview was communicated.

In other words, even if I am to assume the truth of the grievor's message that he left wrth Mr. Negraeve (which appears the more logical story), the "assumption" that the grievor would have received permission to absent himself from work in order to attend that interview is quite clearly unfounded. Since there appeared no urgency for the meeting the grievor could have arranged the interview at his convenience and the convenience of his work schedule at a later date.

For all the foregoing reasons I am satisfied that the grievor's absence without permission amounted to misconduct. However, because I am prepared to give the grievor the benefit of the doubt in his efforts to contact his superiors with respect to his absence through Mr. Negraeve the ten demerit mark penalty should be reduced to 5 demerit marks. Accordingly the appropriate adjustment to the grievor's record is directed.

DAVID H. KATES,
ARBITRATOR.