CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1424
Heard at Montreal, Tuesday, November 12, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EXPARTE

DISPUTE:

Appeal of discipline assessed the record of Welding Foreman Guy Ernst - 20 August 1984.

BROTHERHOOD'S STATEMENT OF ISSUE:

On the 20 June 1984, Supervisor Hannah arrived at the work site to inspect the quality and quantity of the work being performed by members of Mr. Ernst's Gang and deliver forms 780-B to Mr. Ernst in regards to previous investigation.

Following an investigation, Mr. Ernst was assessed 20 demerit marks for failure and refusal to communicate verbally with the company officer and disrespectful attitude and insubordination towards Welding Supervisor R. Hannah.

The Company contends that the grievance is not arbitrable.

The Brotherhood disagree with the Company's contention.

FOR THE BROTHERHOOD:

(SGD.) PAUL A. LEGROS
System Federation
General Chairman

There appeared on behalf of the Company:
T. D.Ferens - Manager Labour Relations, CNR, Montreal
J. Russell - System Labour Relations Officer, CNR, Montreal

And on behalf of the Brotherhood:

Paul A. Legros - System Federation General Chairman, BMWE,Ottawa
W. Montgomery - GeneraI Chairman, BMWE, Belleville

AWARD OF THE ARBITRATOR

In this case the trade union seeks to arbitrate the grievances filed on behalf of Mr. G. Ernst with respect to the disciplinary incidents that occurred on June 20th and 22nd, 1984 respectively.

By the time those grievances were listed for hearing at CROA, the Arbitrator had already sustained the grievor's discharge for the culminating incident that occurred on June 12, 1984, in CROA Cases 1392 and 1393. Those cases were heard on July 10, 1985. Because the grievor had accumulated a total of seventy demerit marks as a result of numerous disciplinary incidents that were sustained at arbitration the grievor thereby ceased to be an employee as of the date of his discharge.

Despite the grievor's termination the trade union insisted that the grievor's remaining grievances be entertained at arbitration with respect to the disciplinary incidents that occurred after his discharge.

The company has challenged the arbitrability of those grievances because they related to incidents that occurred after the grievor had ceased to hold the status of an employee. Or, from a different perspective, the grievor thereafter was no longer an employee who could be subjected to discipline. Accordingly there was no jurisdiction left for the Arbitrator to entertain those grievances.

Apart from the concerns that were expressed at the hearing with respect to the potential for the reversal of a CROA decision as a result of an application for judicial review the employer's challenge makes both good practical as well as legal sense. Once the grievor's discharge was sustained at arbitration there no longer remained an issue to be decided at arbitration. The grievor to all intents and purposes has ceased to be an employee who has a stake in the employment relationship. There is nothing to be gained or lost by entertaining what appears to be redundant grievances.

Naturally, had CROA been presented with an application for judicial review or had we been told that might be the trade union's intention, we would have considered deferring these grievances by adjourning then sine die pending the outcome of the judicial review proceedings.

But in the absence of any such disposition on the trade union's part, I have been satisfied that the grievances for the above reasons are not arbitrable.

DAVID H. KATES,
ARBITRATOR.