

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1425

Heard at Montreal, Tuesday, November 12, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Appeal of the discipline assessed the record of Mr. W. J. Rose, 6 December 1984

JOINT STATEMENT OF ISSUE:

Mr. Rose was suspected of using a Company credit card for the purchase of gasoline for other than a company vehicle.

Mr. Rose was notified by letter dated 21 November 1984 to appear for an investigation on 6 December 1984 and that he was placed out of service without pay until the investigation was completed.

Following the investigation, Mr. Rose was assessed 30 demerits and loss of pay while suspended for investigation for unauthorized use of Company credit card for purchase of gasoline for other than Company vehicle.

The Brotherhood contended the discipline assessed was excessive in that an employee should not be subject to "double discipline" for the same infraction, i.e., suspension and demerits.

The Company denies the Brotherhood'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	- System Labour Relations Officer, CNR,

Montreal

And on behalf of the Brotherhood:

C. Schneider	- System Federation General Chairman, BMW, Winnipeg
T. J. Jasson	- Federation General Chairman, BMW, Winnipeg

AWARD OF THE ARBITRATOR

In this case, the grievor, W. J. Rose was assessed 30 demerit marks for using a company credit card for his own personal needs without authority.

Because the grievor's misconduct represented "a dismissible offence" (i.e., tantamount to theft) the grievor was taken out of service pending investigation. The relevant provisions of the collective agreement allowing the employer to take an employee out of service in these circumstances reads as follows:

"18.4 An employee who is held out of service while under investigation, except in cases where the offence with which charged is of a nature which may result in suspension or dismissal, will be paid for any loss of schedule wages. Suspension will commence from the date the employee is removed from service. Dismissal will be effective on the date the decision is made to dismiss the employee."

The trade union did not contest the notion that the allegation of misconduct made against the grievor represented a dismissible offence. In other words, the trade union agreed that the grievor was properly taken out of service "while under investigation". Nonetheless, the trade union submitted that after the grievor's investigation was completed the employer's delay of approximately eighteen (18) days while the grievor continued to remain out of service until a disciplinary penalty was imposed amounted to an improper suspension. Or, more succinctly, the trade union submits that the grievor has been subjected to "double jeopardy" for the one act of misconduct. As a result it seeks reimbursement for the eighteen days of lost wages and all other benefits.

The trade union recognized that pursuant to Article 18.2(e) of the collective agreement the employer has twenty-eight days (28) after the completion of an employee's investigation to notify the employee of its decision with respect to discipline. During this period the employer might continue its investigation of the circumstances resulting in the allegation of that employee's misconduct or may take sufficient and necessary time in order to deliberate on whether discipline or what quantum of discipline is warranted. In my view, during this period the employer is still in the process of carrying out its investigation and thereby is warranted, because of the nature of the allegation, in keeping the employee out of service. Article 18.2 (e) reads as follows:

"If corrective action is to be taken, the employee will be so notified in writing of the Company's decision within 28 days from the completion of the employee's investigation, unless otherwise mutually agreed. Such notification will be given at the same time or after the employee is personally interviewed by the appropriate Company officer(s) unless the employee is not available for such an interview within the time limit prescribed."

If it were otherwise then the employer might be compelled, without due consideration of the circumstances, to make an ill-informed precipitate decision that would represent the interests of neither the employee nor its own enterprise.

Moreover, given the serious nature of the grievor's infraction, I have not had presented any evidence to support the trade union's theory that the company, in bad faith, was deliberately depriving the grievor of an opportunity to work during the period that followed the grievor's investigation.

Accordingly, the grievance is dismissed.

DAVID H. KATES,
ARBITRATOR.