CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1486

Heard at Montreal, Wednesday, March 12, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS
EX PARTE

DISPUTE:

Claim of Mr. A. R. Labelle, Car Control Clerk, Capreol, Ontario, that he was disciplined without an investigation.

BROTHERHOOD'S STATEMENT OF ISSUE:

On Tuesday, 28 May 1985, the Company conducted a "corrective interview" concerning his irregular behaviour towards a Company officer on May 14, 1985.

The contents of the interview outlining this irregularity was recorded in a letter dated March 14, 1985, which was sent to Mr. Labell A copy of the letter was placed on his personal file.

The Brotherhood submitted a grievance indicating that placing this letter on Mr. Labelle's file is a form of discipline and in violation of Articles 24.1 and 24.2 of Agreement 5.1, as clearly indicated by the Arbitrator in an identical award, CROA Case #1349.

The Brotherhood requests that the letter be removed from his personal file and in future that such letters outlining irregularities (work-related or otherwise) will not be placed on any employees' files without the requirement of Articles 24.1 and 24.2 of Agreement 5.1.
The Company denied that Mr. Labelle has been disciplined and has declined to remove the copy of this letter from his personal file at Step One and Step Two and failed to reply within the prescribed time limits at the final Step Three (Four).

FOR THE BROTHERHOOD:

(SGD.) T. N. STOL
FOR: T. McGrath
National Vice-President

There appeared on behalf of the Company:

D. Lord - Labour Relations Officer, CNR, MOntreal
W. W. Wilson - Manager Labour Relations, CNR, Montreal
G. Hutt - Trainmaster, CNR, Hornepayne
L. Bergeron - Labour Relations Trainee, CNR, Montreal

And on behalf of the Brotherhood:

R. J. Stevens - Representative, CBRT&GW, Toronto

Based on the parties' consent for an ad?burnment this case will be held in abeyance until further notice by either of them.

DAVID H. KATES,
ARBITRATOR.

AWARD OF THE ARBITRATOR

The coMpany advised that it was withdrawing its objection to the timeliness of the trade union's grievance.

The only issue that must be resolved on the merits is whether the company is obliged to invoke the procedures for holding a disciplinary investigation, as contained in the collective agreement, as a condition precedent to assessing an employee a written warning with respect to an alleged infraction.

As stated in CROA Case #1349 where such warnings are to be used as part of an employee's disciplinary record the employer's obligation under the collective agreement is mandatory. It must hold a fair and impartial investigation of the circumstances that prompted the issuance of the written warning in order to enable the aggrieved employee to respond to the charge of an alleged wrongdoing. Failure to adhere to that requirement, irrespective of the positive purpose that is served by a disciplinary warning, will result in the vitiation of the penalty. As a result, because the employer omitted to have recourse to a disciplinary investigation, the grievance must succeed.

The employer is directed to remove the written warning from the grievor's personal record.

DAVID H. KATES,
ARBITRATOR.