CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1487

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 Ms. E. G. Dendl,General Clerk, MacMillan Yard, Toronto, that she was disciplined without an investigation.

BROTHERHOOD'S STATEMENT OF ISSUE:

On March 11, 1985, Ms. Dendl was called in the office of Mr. B. W.Taylor, Assistant Superintendent, for an interview concerning her poor attendance and work performance from October 2, 1984, to March 8, 1985.

The contents of the interview outlining these irregularities were recorded in a letter dated March 14, 1985, which was sent to Ms. Dendl. A copy of the letter was placed on her personal file.

The Brotherhood submitted a grievance indicating that by placing this letter on Ms. Dendl's file was a form of discipline and therefore in violation of Articles 24.1 and 24.2 of Agreement 5.1, whereby she was disciplined without an investigation. Such was clearly indicated by the Arbitrator in an identical award, CROA Case No. 1349.

The Brotherhood requests that the letter be removed from her personal file and in future that such letters outlining irregularities (work related or otherwise) will not be placed on any employees' files without the requirements of Articles 24.1 and 24.2 of the 5.1 Agreement.

The Company denied that Ms. Dendl was disciplined and has declined to remove the copy of this letter from her personal file at Step 1 and 2, and failed to reply within the prescribed time limits at the final Step 3(4).

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 adjournment 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.