

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1602

Heard at Montreal, Tuesday, January 13, 1987

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Appeal of the discipline assessed the record of Track Maintenance Foreman R. J. Drover.

JOINT STATEMENT OF ISSUE:

Following an investigation, Mr. Drover was assessed 30 demerit marks for violation Rule 1.24, Part II, General Rules of Form 1233E, which resulted in his discharge for accumulation of demerit marks in excess of 60.

The Union contended the discipline assessed was unwarranted.

The Company denied the Union's contention.

FOR THE BROTHERHOOD:

(SGD.) PAUL A LEGROS
System Federation General Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Assistant Vice-President
Labour Relations.

There appeared on behalf of the Company:

T. D. Ferens	- Manager Labour Relations, CNR, Montreal
J. Dunn	- System Labour Relations Officer, CNR, Montreal
T. B. Wheaton	- Roadmaster, CNR, St. John's, Newfoundland

And on behalf of the Brotherhood:

Paul A. Legros	- System Federation General Chairman, BMWE, Ottawa
R. Y. Gaudreau	- Vice-President, BMWE, Ottawa
J. J. Roach	- General Chairman, BMWE, Moncton

AWARD OF THE ARBITRATOR

On the evidence of the material the Arbitrator agrees with the position of the Union that discharge was excessive in the circumstances. The actions of the grievor are not to be condoned, involving as they did absenting himself from work during scheduled hours without proper authorization. Nor does the fact that he worked through his lunch period ultimately alter the merits of the

grievance. In the Arbitrator's view, however, the grievor's good work record and thirteen years of service to the Company are a mitigating factor to be taken into account.

In the circumstances the grievor's demerit marks shall be restored to 45, and he shall be reinstated in employment subject to demotion to the rank which he held prior to his promotion to Track Maintenance Foreman, without compensation or benefits. I retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award.

MICHEL G. PICHER,
ARBITRATOR.