

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1648

Heard at Montreal, Tuesday, May 12, 1987

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Appeal against discipline assessed Mr. Wayne Smith which resulted in his dismissal, effective 05 March, 1986, for accumulation of demerit marks.

BROTHERHOOD STATEMENT OF ISSUE:

The Brotherhood contends that at Mr. Smith's formal investigation held February 17, 1986, the Company violated Article 18.2, 18.3, 18.4 and Appendix IV of Agreement 10.1 by failing to allow Mr. Smith and his accredited union representative the right to ask questions and hear evidence from all the alleged irregularities for which he was disciplined.

The Company denies the Brotherhood's contention.

FOR THE BROTHERHOOD:

(SGD.) G. Schneider
System Federation General
Chairman

There appeared on behalf of the Company:

T.D. Ferens	- Manager Labour Relations, Montreal
J. Dunn	- System Labour Relations Officer, Montreal
H. Prystie	- Roadmaster, Symington
B. Bittner	- Track Maintenance Foreman, Symington
M. Vaillancourt	- Coordinator Engineering Special Projects, Montreal

And on behalf of the Brotherhood;

G. Schneider	- System Federation General Chairman, Winnipeg
T.A. Jasson	- Federation General Chairman, Winnipeg
M.A. Gottheil	- Assistant to the Vice-President, Ottawa

AWARD OF THE ARBITRATOR

At the hearing the Union's representative advised the Arbitrator that the Union did not seek a definitive interpretation of Article 18.2 (d) of the Collective Agreement, a portion of the Collective Agreement which deals with evidential procedure in the gathering of information in a disciplinary investigation. The evidence establishes that on at least three occasions, on January 28, 1986, February 9, 1986, and February 10, 1986 respectively, the grievor refused to perform assigned duties, alleging among other things that it was too cold and that the working conditions surrounding the snow clearance of switches assigned to him were unsafe because of inadequate provision for lookouts.

Those assertions are not sustained in the material before the Arbitrator. On each of the occasions in question the grievor was assigned to work in conjunction with at least two other employees, in a circumstance which allowed every opportunity for a 'buddy system' to be in operation, with one member of the crew keeping watch for train movements to protect the other two. On the occasion that Mr. Smith alleged that it was too cold to work, he and his fellow crew members had just completed a one hour coffee break and warm up period, and apparently neither of his fellow employees had any difficulty returning to their outdoor duties.

Mr. Smith's prior record is extensive. At the time of the culminating incident it stood at 50 demerits, further including a 90-day suspension and a written reprimand. The record reveals earlier incidents of the grievor leaving the job and failing to protect his assignment, as well as being absent without leave and being at work under the influence of alcohol. In all of the circumstances the Arbitrator cannot conclude that the 20 demerits assessed against Mr. Smith were not within the appropriate range of disciplinary response, especially given the grievor's relatively short years of service. For the foregoing reasons the grievance must be dismissed.

MICHEL G. PICHER
ARBITRATOR