

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1755

Heard at Montreal, Thursday, 11 February 1988

Concerning

CANADIAN NATIONAL RAILWAY

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Appeal against discipline assessed Mr. F. Bogoslawski effective June 27, 1986.

BROTHERHOOD'S STATEMENT OF ISSUE:

On June 27, 1986, Mr. F. Bogoslawski was discharged from the Company for an accumulation of 65 demerit marks as per Form 780-B dated June 27, 1986.

The contention of the Brotherhood is that the discipline assessed Mr. Bogoslawski which resulted in his discharge was unjustified and punitive due to the fact that Mr. Bogoslawski was experiencing personal problems during the period he was absent from work for which he was disciplined.

The Brotherhood also contends that the discharge is unjustified due to the fact that Mr. Bogoslawski had twelve months of discipline-free, active service and therefore, his discipline record should have been reduced by 20 demerit marks as per the Company's policy on Corrective Discipline Action dated May 12, 1986.

The Company disagrees with the Brotherhood's contentions.

FOR THE BROTHERHOOD:

(SGD) G. SCHNEIDER  
System Federation General Chairman

There appeared on behalf of the Company:

J. Glazer	- Counsel, Montreal
T.D. Ferens	- Manager Labour Relations, Montreal
G. Blundell	- Labour Relations Officer, Montreal
M. Vaillencourt	- Engineering Co-Ordinator, Montreal
Mr. G.W. Katcher	- Regional Supervisor, Bridges & Structures, Winnipeg

G.M. Ducharme	- General Supervisor, Regional Gangs Winnipeg
A. Watson	- System Labour Relations Trainee, Montreal

And on behalf of the Brotherhood:

M. Gottheil	- Assistant to the Vice-President, Ottawa
F.J. Bogoslawski	- Grievor

#### AWARD OF THE ARBITRATOR

The material establishes that Mr. Bogoslawski has incurred discipline on a number of prior occasions for being absent from work without leave. He was again absent, without authorization at the very least from May 20 to 26, 1986, inclusive. I am satisfied that, notwithstanding the grievor's personal circumstances, the imposition of twenty demerits was an appropriate disciplinary measure in the circumstances.

The Form 708-B prepared by the Company in respect of the grievor's discipline states that the demerits are registered against his record "effective May 29, 1986". On the facts of this case the Arbitrator must accept the Union's submission that on May 28, 1986 the grievor's disciplinary record should have been reduced by twenty demerits, in keeping with the Company's disciplinary policy, as the last assessment of discipline against the grievor was effective May 27, 1985. In the result the grievor had forty-five demerits, and not sixty-five, against his record, and he should not have been discharged. In the circumstances the grievor must be reinstated in his employment with full compensation and benefits, without loss of seniority, and it is so ordered.

Nothing in the foregoing result should be construed as condonation of the grievor's actions. His prior record in respect of attendance at work leaves much to be desired as does his apparent inability to appreciate the necessity to give his supervisors adequate prior notice when he will not be at work. Any failure on the part of Mr. Bogoslawski to correct his conduct in this regard in the future may have the most serious of disciplinary consequences.

I remain seized in the event of any dispute between the parties concerning the interpretation or implementation of this award.

MICHEL G. PICHER  
ARBITRATOR