

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1807

Heard at Montreal, Tuesday, 12 July 1988

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN SIGNAL AND COMMUNICATIONS UNION

DISPUTE:

Appeal of discipline assessed S&C Maintainer G. Violette effective 23 July 1987.

JOINT STATEMENT OF ISSUE:

Following an investigation Mr. Violette was assessed 25 demerit marks for a violation of Section 5.12 of Form 835, unauthorized absence from work, and failure to correct time card as instructed by his Supervisor. This resulted in Mr. Violette's discharge from service due to accumulation of demerit marks in excess of 60 effective 27 August 1987.

The Union contends that Mr. Violette has been unjustly dealt with and that the Company had been unfair in the assessment of discipline. The Union requests that Mr. Violette be returned to service immediately with all rights and benefits he should have received since his dismissal.

The Company has denied the Union's contention and declined the request to reinstate Mr. Violette.

FOR THE UNION:

FOR THE COMPANY:

(Sgd) J. E. PLATT
National President

(Sgd) W. W. WILSON
for: Assistant Vice-President
Labour Relations

There appeared on behalf of the Company:

G. Blundell	- Labour Relations Officer, Montreal
T. D. Ferens	- Manager, Labour Relations, Montreal
R. Paquette	- Senior Analyst, Montreal
H. Hartman	- Labour Relations Officer, Moncton
W. Trenholm	- System Manager, Operations S&C, Montreal
R. MacKinnon	- S&C Engineer, Moncton

T.E. Graham - Supervisor S&C Maintenance, Edmunston

And on behalf of the Union:

A. G. Cunningham - National Vice-President, Montreal
A. B. Vigneault - Assistant to the Vice-President, Montreal
G. T. Violette - Grievor

AWARD OF THE ARBITRATOR

It is not disputed that Mr. Violette failed to cancel a Track Occupancy Permit in a timely manner on July 23, 1987. That infraction is clearly deserving of discipline, the measure of which is discussed below.

The second aspect of the grievance concerns Mr. Violette's alleged unauthorized absence from work and his failure to correspondingly correct his time card "as instructed by his Supervisor". The material establishes that shortly after 1500 hours on July 23, 1987 Mr. Violette left the Company's yard at Edmunston. By his account he proceeded to the Trans-Canada Highway with the intention of going to Green River to perform some further maintenance tasks. He relates that as he reached the highway he realized that he would need a power drill which he had previously borrowed from the Company and which was at his residence. He then reversed direction and proceeded to his home where, it is not disputed, he spent some twenty minutes.

Because of the failure of Mr. Violette to cancel the Track Occupancy Permit, Signals and Communications Maintenance Supervisor R. L. Brown drove to his home looking for him. When Mr. Violette emerged from the house holding a drill Mr. Brown immediately directed him to contact the train dispatcher to cancel the permit. It appears uncontroverted that thereafter the grievor proceeded back to work.

There is no evidence that the grievor was instructed by Mr. Brown or by anyone else, either orally or in writing, to adjust his time card to reflect a reduction of twenty minutes in time. Nor is it clear to the Arbitrator that such a directive would have been justified. Mr. Violette's account of these events discloses that he required the twenty minutes to proceed to his home, obtain the drill and use the bathroom. Bearing in mind that the Company has the burden of proof in a disciplinary matter such as this, it is not altogether clear that the grievor would have saved any appreciable time by returning to the Company's yard to collect a different power drill and use the bathroom facilities there. It appears, by the Company's own admission, that what motivated this aspect of the discipline against the grievor was the belief of his supervisor that in fact he had no intention of going to Green River, and had proceeded home to stay shortly after 1500 hours on the day in question.

It is axiomatic that employees are liable to discipline for their actions, but not for their thoughts, wishes, or intentions. In the circumstances at hand it might have been open to the Company to prove what it believed was Mr. Violette's intention to stay home by not communicating with him, but merely by observing his residence to see

whether he indeed would proceed to Green River. This, however, it did not do, and the undisputable fact is that Mr. Violette did emerge from his home with a drill in hand and proceeded to work for the balance of the afternoon. In light of these facts, it becomes difficult for the Arbitrator to sustain the Company's position that the time taken by Mr. Violette to proceed to his home rather than to the Company's yard, to pick up a drill and to go to the bathroom, can fairly be characterized as an unauthorized absence from work. There was no express instruction to him to adjust his time card, and no discipline can attach in respect of that aspect of the grievor's actions. It is also a cause of concern to the Arbitrator that, by the Company's own admission, Mr. Violette, an employee of some twenty-three years' standing, was given no corrective interview, in keeping with the Company's normal practice, when, in advance of the culminating incident, his prior disciplinary record had reached the level of forty demerits.

The Arbitrator is satisfied, on the whole of the material, that no discipline is justified in respect of the grievor's decision to proceed to his home to obtain the power drill on the occasion in question. The only disciplinable offense revealed is Mr. Violette's admitted failure to cancel a Track Occupancy Permit within the time limits required. As he had been involved in a similar offence only a short time earlier, on July 16, 1987 (see CROA 1805) for which he was justly assessed five demerits, it appears to the Arbitrator that the imposition of ten demerits for his second infraction of the same rule would arguably have been an appropriate disciplinary measure in the instant case.

As a result of the decision of C.R.O.A. 1806, the grievor's effective disciplinary record stood at fifty demerits prior to the events of July 23, 1987. On its face the assessment of a further ten demerits could be seen as justifying the grievor's termination. In the Arbitrator's view, however, there are mitigating circumstances which justify the substitution of a lesser penalty. Mr. Violette has been a good and productive employee in the service of the Company for the last twenty-three years. It appears that prior to 1987, while not without some discipline, the grievor's record was relatively positive. As the material discloses he was not an employee who had to exercise extra care and vigilance because of a precarious demerit position. As noted, moreover, the Company failed to conduct a corrective interview with the grievor, as it normally does with all employees, when his demerits did reach a total of forty prior to the culminating incident.

The material establishes that between April 11, 1987 and the culminating incident the grievor was disciplined on five separate occasions for what the Company assessed as a total of eighty demerits. The first two incidents concerned the submission of a single overtime report, and its subsequent resubmission, for an assessment of twenty-five and fifteen demerits respectively as of April 11 and June 12, 1987. The third and fourth incidents arise out of a single happening which forms the substance of the awards in C.R.O.A. 1805 and 1806. In other words, in a period of a little over three months an employee of long service and with a good record accumulated an uncharacteristically high number of demerits. In the Arbitrator's view in these circumstances it is more appropriate to

substitute a suspension with respect to the culminating incident, rather than impose the ten demerits which would have lead to the grievor's discharge. Bearing in mind the seriousness of Mr. Violette's infraction with respect to failing to cancel his Track Occupancy Permit, particularly in light of his earlier rules infractions disclosed in C.R.O.A. 1805 and 1806, I deem it appropriate to reinstate Mr. Violette forthwith in his employment, without compensation and benefits, and without loss of seniority, with his disciplinary record to stand at fifty demerits. I retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award.

July 15, 1988

(SGD) MICHEL G. PICHER
ARBITRATOR