

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1859

Heard at Montreal, Wednesday, 14 December 1988

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed Yard Foreman W. Czumak, Toronto, 17 November 1986.

JOINT STATEMENT OF ISSUE:

At the material time, Mr. W. Czumak was employed as Yardman and assigned to the Toronto Yardman's Spareboard. He was summoned to appear for an investigation scheduled for November 17, 1986. Mr. Czumak failed to appear for the investigation.

A subsequent investigation into his failure to appear was conducted on December 30, 1986. As a result, Yard Helper Czumak was assessed 10 demerit marks for:

"Failure to appear for an investigation scheduled for 09:00 hours, 17 November 1986 after being properly notified of same."

The Union appealed on the grounds that the grievor was not properly notified to appear for the investigation scheduled for November 17 and therefore the discipline was unwarranted. The Union further contends that the investigation in the instant dispute was not conducted in compliance with Addendum 41 to Agreement 4.16.

The Company declined the appeal.

FOR THE UNION:

(Sgd) W. G. SCARROW
General Chairman

FOR THE COMPANY:

(Sgd) M. DELGRECO
for: Assistant Vice-President
Labour Relations

There appeared on behalf of the Company:

J. B. Bart - Manager, Labour Relations, Montreal
P. D. Morrissey - Labour Relations Officer, Montreal
D. E. Lussier - Co-Ordinator, Transportation, Montreal

And on behalf of the Union:

W. G. Scarrow - General Chairman, Sarnia

L. W. Karn - Vice-General Chairman, Windsor
R. J. Roach - Local Chairman, Toronto
B. E. Phillips - Local Chairman, Belleville
W. Czumak - Grievor

AWARD OF THE ARBITRATOR

It is not disputed that the grievor did fail to appear for the investigation scheduled for November 17, 1986. He was plainly given verbal notice of the investigation by telephone on November 14. The only issue is whether he received written notice of not less than forty-eight hours prior to the investigation as contemplated in Article 4(b) of Addendum 41 which provides as follows:

4(b) If required to attend a formal investigation, the employee will be properly notified in writing, which will outline the incident under investigation, and be given at least 48 hours' notice.

In the Arbitrator's view the intention of the foregoing provision is that the employee be provided written notice at least forty-eight hours in advance of a formal investigation. It is at least arguable, however, whether the article is intended to be mandatory, rather than directory, in the sense that any departure from its requirement must vitiate all proceedings. I find it unnecessary to deal with that issue, however, in the context of this case. On the documentary material filed, I am satisfied that the Company did deliver, by means of a courier, the written notice of the formal investigation to the grievor's mailing address on November 14, 1986. In my view that constitutes substantial compliance with the terms of Paragraph 4(b) of Addendum 41. The grievor has therefore not demonstrated any justification for his failure to attend at the investigation, and I must conclude that the imposition of ten demerits was within the appropriate range of disciplinary measure in the circumstances.

For the foregoing reasons the grievance must be dismissed.

December 16, 1988

(Sgd.) MICHEL G. PICHER
ARBITRATOR