CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2030

Heard at Montreal, Tuesday, 12 June 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Discharge of Yardmaster W.C. Brisebois, PIN 854782, June 1, 1989, for accumulation of demerit marks in excess of 60.

JOINT STATEMENT OF ISSUE:

Effective April 24, 1989, Yardmaster W.C. Brisebois, PIN 854782, was assessed 30 demerit marks for failure to properly perform his duties of Yardmaster and sleeping on duty while assigned to the 2300 Oshawa Yard assignment April 24, 1989. This assessment brought the total number of demerit marks to 80. He was consequently discharged for accumulation of demerit marks.

The Union appealed the discharge on the basis that the discipline was unwarranted and that, in any case, it was too severe.

The Company rejected the appeal.

FOR THE UNION:	FOR THE COMPANY:
(SGD) W. G. SCARROW	(SGD) M. DELGRECO
GENERAL CHAIRPERSON	for: ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

M. Hughes -- System Labour Relations Officer, Montreal
J. B. Bart -- Manager, Labour Relations, Montreal
S. F. McConville -- System Labour Relations Officer, Montreal
M. Fisher -- Co-Ordinator, Transportation, Montreal
R. S. Rennie -- General Yardmaster, Oshawa

And on behalf of the Union:

W. G. Scarrow -- General Chairperson, Sarnia
W. C. Crossman -- Local Chairperson, Oshawa
T. Slywka -- Local Chairperson, Toronto
W. Brisebois -- Grievor

AWARD OF THE ARBITRATOR

The material establishes that during his tour of duty as yardmaster on the 2300-0700 shift at Oshawa Yard, Mr. Brisebois was discovered lying face down on a cot in the yardmasters' office by General Yardmaster R.S. Rennie at approximately 0320 hours. According to Mr. Rennie's report, he had noticed that there had been no radio communication for a considerable time between the grievor and the sole yard crew working under his direction that night, from approximately 0200. He further noted that from approximately 0240 hours the lights in the yardmasters' office were extinguished, a situation which also obtained when he discovered Mr. Brisebois lying on the canvas cot. From the photographic evidence filed at the hearing the cot appeared to be a typical backyard lounge cot, and it is common ground that it was not owned or furnished by the Company.

The grievor maintains that he was not asleep, but had merely decided to lie down while monitoring switching operations from his office, because he felt ill. Having regard to the totality of the evidence, the Arbitrator cannot accept that explanation. If the grievor preferred to be in a reclining, rather than a sitting or standing, position during his tour of duty, this might have been accomplished without turning off the lights in his office. Moreover, if he felt ill, it was his option, if not his obligation, to advise a supervisor of his situation and obtain approval for the use of a cot. In fact, however, the objective evidence is consistent with a very contrary intention. The Arbitrator is compelled to conclude, on the balance of probabilities, that having assumed a lying position on a cot, with the lights in his office turned off for a period of at least a half hour, the grievor was acting in pursuance of a deliberate intention to sleep while on duty.

In mitigation the Union's representative pleads certain personal problems, including a condition of depression for which Mr. Brisebois had received some treatment under the general supervision of his family doctor. In the Arbitrator's view, however, the slim medical evidence presented at the hearing does not suffice to establish a causal link between the grievor's medical or emotional condition and his conduct on the night in question. While the brief note from the grievor's doctor filed in evidence indicates that he has suffered from depression, it makes no link between that condition and his ability to understand and fulfill his normal obligations to his employer.

As recognized by this Office in CROA 1573, an employee who knowingly and deliberately abandons his or her work obligations to engage in sleeping while on duty commits an offence deserving of a serious measure of discipline. At the time of the incident at hand Mr. Brisebois had a substantial disciplinary record, which stood at forty-five demerits. In the Arbitrator's view, notwithstanding his fifteen years of service at the time, the grievor knew, or reasonably should have known, that an incident of this gravity could place him in a dismissable position. I find myself unable to conclude that, at a minimum, fifteen demerits would not be within the appropriate range of discipline in a circumstance of this kind. On that ground alone,

the grievance would be dismissed. Additionally, I am satisfied that the Company has established that the grievor was not sufficiently attentive to his responsibilities in respect of the supervision of the yard crew under is direction on the night in question, which resulted in at least two assignments, one of which was of considerable priority to an important customer, not being completed. On the whole I would not disturb the assessment of thirty demerits in the circumstances.

For the foregoing reasons the grievance must be dismissed.

June 15, 1990 (Sgd.) MICHEL G. PICHER
ARBITRATOR