

Canadian Railway Office of Arbitration

Case No. 2617

Heard in Calgary, Tuesday, 9 May 1995

concerning

Canadian National Railway Company

and

Brotherhood of Maintenance of Way Employees

ex parte

Dispute:

Mr. G. Gariano, Bridgeman, was assessed discipline of 15 demerit marks for allegedly reporting late for work on June 21, 1994 which led to his discharge due to accumulation of demerit marks.

Ex Parte Statement of Issue

The Company alleges that on June 21, 1994, Mr. Gariano was 45 minutes late reporting to the work site.

It is the contention of the Brotherhood that Mr. Gariano was unjustly dealt with by the Company as he had made prior arrangements with his foreman to meet at another location.

The Brotherhood has requested that Mr. Gariano be reinstated with full wages, seniority, benefits, etc.

The Company has denied the Brotherhood's contention and declined the Brotherhood's request.

for the Brotherhood:

(sgd.)G. Schneider

System Federation General Chairman

There appeared on behalf of the Company:

D. Noyes - Labour Relations Officer, Edmonton

B. Laidlaw - Labour Relations Officer, Edmonton

G. Small - Assistant Manager, B&B

J. Barker - Foreman, B&B

And on behalf of the Brotherhood:

Robt. A. Philp - Counsel

G. Schneider- System Federation General Chairman, Winnipeg

R. Liberty - Secretary/Treasurer, Winnipeg

G. Gariano - Grievor

award of the Arbitrator

Upon a review of the evidence, the Arbitrator is satisfied that the grievor was late for work on June 21, 1994. The evidence of Supervisor Jim Barker, which the Arbitrator accepts, indicates that on the day prior, upon being advised that the crew was to meet at the Esso station in Edson at 6:00 a.m., Mr. Gariano responded that he would either be at the Esso station at 6:00 a.m., or if he was not, that he would be at the crossing location at mile 17.45 in time for the commencement of work, at or about 6:30 a.m. In fact the grievor only arrived at the crossing at 6:45 a.m. In the result, it is common ground that he was fifteen minutes late for work.

The real issue to be resolved is whether the assessment of fifteen demerits, resulting in the discharge of Mr. Gariano for an accumulation of demerit marks, was an appropriate disciplinary result in the circumstances. In mitigation the Brotherhood argues a number of points, stressing the fact that there was some confusion in the grievor's mind as to the starting time, as the crew had been given different starting times in the weeks previous, depending on whether they were working at the crossing or at an nearby bridge location. Counsel for the Brotherhood also

notes that there was in fact no productive work being done when the grievor did appear at the crossing, some fifteen minutes late, as the crew was inactive while awaiting the arrival of Foreman Colin Haines.

The Company points to the grievor's prior disciplinary record in support of the decision to assess fifteen demerits against him and to terminate his services. It also brings to the Arbitrator's attention letters of protest written by the grievor to the Company's Vice-President, as well as to the Minister of Transport, concerning his termination and general allegations of harassment by the Company. This evidence, it submits, should be taken into account in considering the grievor's potential for rehabilitation and reinstatement.

On balance, the Arbitrator is inclined to agree with Counsel for the Brotherhood that the decision of the Company to assess fifteen demerits, resulting in the discharge of Mr. Gariano, should be assessed in light of the facts as they existed at the time of the Company's decision. In the circumstances, evidence of subsequent events, while admissible, can be given little weight in determining the equities as they stood at that time.

While the Arbitrator agrees that the grievor's prior disciplinary record cannot be disregarded, the fact remains that an employee of some ten years' service was fired on the strength of his having been late for work by fifteen minutes, in circumstances where there was in fact no loss of productivity to the Company, as his crew was not yet at work when he did arrive. In all of the circumstances, I am not persuaded that a substitution of penalty at this time, at a sufficient degree of severity, would not be sufficient to bring home to Mr. Gariano the importance of being timely in his attendance at work in the future. In light of the fact that he had received a previous reminder to that effect on June 9, 1994, and that his disciplinary record stood at a precarious level at the time of the culminating incident, I am satisfied that this is not an appropriate case for compensation, but that the substitution of a period of suspension, with the removal of the fifteen demerits assessed, is appropriate in the circumstances.

The Arbitrator therefore directs that the grievor be reinstated into his employment forthwith, without compensation and without loss of seniority, with the fifteen demerits assessed to be removed from his record.

May 18, 1995(sgd.) MICHEL G. PICHER

ARBITRATOR