CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3218
Heard in Calgary, Wednesday, 14 November 2001
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)
EX PARTE

DISPUTE:

Appeal of the assessment of twenty-five (25) demerits for unsatisfactory work record between March 10, 1999 and June 1, 1999 and resulting dismissal for accumulation of demerits in excess of sixty (60) of Yard Conductor Randy J. Ludlow.

COUNCIL'S STATEMENT OF ISSUE:

Mr. Ludlow was required to provide an employee statement regarding his work record on June 4, 1999. The statement was rescheduled for June 8, 1999, at which time r. Ludlow presented himself, albeit without Union representation, prepared to provide the statement. The statement was commenced and then adjourned.

The statement was rescheduled several times and each time Mr. Ludlow presented himself without Union representation. Each time the Company refused to go forward with the statement.

The Company chose to proceed with the statement in Mr. Ludlow's absence. The Company has informed the Union that the presiding officer's notes have been entered into the statement and based on that and other evidence Mr. Ludlow was assessed 25 demerits and dismissed.

The Union contends that there is compelling medical evidence justifying Mr. Ludlow's work record and behaviour regarding the statements which has not been considered by the Company. The Union further contends that the Company's failure to produce the evidence used to discipline Mr. Ludlow violated the grievance procedure and the resulting discipline cannot be considered valid.

The Union requests that Mr. Ludlow be reinstated and be made whole for his losses.

The Company disagrees with the Union's contentions.

COMPANY'S STATEMENT OF ISSUE:

Mr. Ludlow was required to provide an employee statement regarding his work record on June 4, 1999. On June 3, 1999, Mr. Ludlow informed the investigating officer that he had not arranged for union representation. The statement was rescheduled for June 8, 1999, at which time Mr. Ludlow presented himself, without union representation, yet was prepared to proceed without. The investigating officer thought it was appropriate to re-schedule the investigation to allows Mr. Ludlow to arrange for representation.

The statement was rescheduled several times, each time due to the fact that Mr. Ludlow failed to arrange for union representation. Each rescheduling of the statement was to allow Mr. Ludlow the opportunity to seek union representation.

On June 18, 1999, after five (5) previous attempts to conduct the investigation, Mr. Ludlow again appeared for the investigation without representation. An incident ensued that resulted in the investigation being concluded and discipline assessed based on the information gathered to that point.

The Union contends that there is compelling medical evidence justifying Mr. Ludlow's work record and behaviour regarding the statements which has not been considered by the Company. The Union further contends that the Company's failure to produce the evidence used to discipline Mr. Ludlow violated the grievance procedure and the resulting discipline cannot be considered valid.

The Union requests that Mr. Ludlow be reinstated and made whole for his losses.

The Company disagrees with the Union's contentions.

FOR THE COUNCIL: FOR THE COMPANY:
(SGD.) R. HACKL (SGD.) R. RENY
FOR: GENERAL CHAIRPERSON FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:
D. N. Kruk - Counsel, Edmonton
R. Reny - Human Resources Associate, Vancouver
R. Eisenman - Transportation Supervisor
D. Solomon - Witness
B. Jones - Witness

And on behalf of the Council:
D. Ellickson - Counsel, Toronto
B. J. Henry - General Chairperson, Edmonton
R. Hackl - Vice-General Chairperson, Edmonton
B. Boechler - Vice-General Chairperson, Edmonton
R. J. Ludlow - Grievor

At the request of the parties, the hearing was adjourned by the Arbitrator, and ultimately resolved between the parties.