

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 161

Heard at Montreal, Tuesday, July 8th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS**

DISPUTE:

Discipline assessed Mr. A. Baillargeon, Telephone Salesman, Montreal, for insubordination on April 26, 1968.

JOINT STATEMENT OF ISSUE:

On April 19, 1968 at 4:00 p.m., Mr Baillargeon was engaged in a telephone conversation. He would normally finish work at that time. He drew the attention of his supervisor to the fact that it was 4:00 p.m. and that he had to leave. He was instructed by the supervisor to complete the phone call. He refused to complete the call and left the premises. He was advised on April 22 that he was suspended for insubordination and to appear for investigation on April 27. His record was assessed with five demerit marks with time out of service to count as suspension. The Brotherhood claims that Mr. Baillargeon was improperly disciplined when held out of service pending investigation and that he be compensated for the three days lost.

FOR THE EMPLOYEES:

(Sgd) J. A. PELLETIER
EXECUTIVE VICE-PRESIDENT

FOR THE COMPANY:

(Sgd.) K. L. CRUMP
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. O. McGrath	– Labour Relations Assistant, Montreal
B. Noble	– Senior Agreements Analyst, Montreal
G. A. Carra	– Labour Relations Assistant, Montreal
V. Dufresene	– Supervisor of Sales & Services, Montreal
J. Guay	– Assistant Supervisor Reservation Bureau, Montreal

And on behalf of the Brotherhood:

J A. Pelletier	– Executive Vice President, Montreal
P. E. Jutras	– Regional Vice President, Montreal
Y. Tremblay	– Local Chairman, Montreal
J. A. Levia	– Representative, Montreal
A. Baillargeon	– Grievor

AWARD OF THE ARBITRATOR

The grievor, a telephone salesman at Montreal, regularly works from 8:00 a.m. until 4:00 p.m. At approximately two minutes before 4:00 p.m. on April 19, 1968, in the course of his duties, the grievor received a telephone call distributed to his work station by the company's automatic call distribution system. The call was from a representative of the company's passenger sales office in Quebec City. The grievor understood that the call would take ten to fifteen minutes to complete, and since he had an engagement which he regarded as important, he interrupted the conversation at about 4:00 or 4:01 p.m. and called over to his supervisor, asking to be relieved. Calls on the system are not transferable, and no relief was scheduled for the grievor's station after 4:00. It would have been necessary for the supervisor to send another employee to that station to take over the call. Another employee was available and this was what was eventually done. The supervisor, however, directed the grievor to complete the call. The grievor refused to complete the call and prepared to leave his work station. The supervisor made it clear to the grievor that his leaving would be considered insubordination, but the grievor nevertheless left.

Another employee was assigned to the station and the call was completed at about 4:04 p.m.

Article 5.1 of the collective agreement provides generally for overtime work. The article sets out that "Every effort will be made to avoid the necessity for overtime; however, when conditions necessitate, employees will perform authorized overtime work as locally arranged". In the instant case although the call which the grievor received was begun during his regular hours, it continued into overtime and he could have claimed payment at overtime rates for work performed after 4:00 p.m. It appears that employees frequently work a few minutes after 4:00 in order to complete the calls on which they are engaged, although claims for overtime are rarely made in such cases. In the instant case the grievor had an "important engagement", and believed the call would last ten or fifteen minutes. It was for this reason that he asked to be relieved. It may be observed here that the nature of the grievor's engagement is not in issue. It may be that in some circumstances an employee has an obligation to set out the grounds for a request such as for leave of absence, early leaving, or relief from overtime, but there appears to be no reason in the instant case to question the nature of the grievor's business or the bona fides of his request.

No reason was given for the refusal of the grievor's request. Another employee was available who could have done, and ultimately did do the work. If this had not been the case, then I have no doubt it would have been the grievor's duty to remain at work and complete the call. In the circumstances of this case, however, it cannot be said that conditions "necessitated" the grievor's remaining at work. While the propriety of the supervisor's order was questionable, there is no doubt that the grievor did refuse it, and left his work. It is not suggested that his behaviour was abusive, or improper in any other respect.

Whether or not an employee's conduct constitutes insubordination for which he may properly be disciplined is a matter to be determined having regard to the particular circumstances of each case. It has, of course, been held in a great many arbitration cases that even where an employee is given an improper order, his proper course is to comply with the order and then file a grievance if he believes that his rights under the collective agreement have been infringed. The uninterrupted continuation of operations, and the maintenance of proper respect for authority are the reasons behind such decisions. In **Case No. 120**, it was held that a conductor ought to have taken his train out on time, even though the company was itself in breach of its obligation to provide certain supplies. In other circumstances, however, for example if essential supplies were missing, the conductor might quite properly have refused to take out the train. **Case No. 139** may also be considered with reference to the present case. There the grievor was suspended for five days for his refusal to take down a notice. The order given to the grievor was, it was found, improper. The award then dealt with the question raised in this case:

It was argued however that he ought nevertheless to have obeyed the instruction to take down the notice complained of, filing a grievance if he so desired. This argument is based on the principle set out in many arbitration cases that an employee must follow instructions (unless to do so would subject him to an unreasonable risk of harm or the like) and seek redress through the grievance procedure. This principle was recently expressed in **Case No. 120** where it was held that the grievor ought to have proceeded to take out his train on time even though the Company was in breach of its agreement to provide certain supplies. The rationale of such rulings is that it is essential that the operation – fundamental to the livelihood of employers and employees – may continue uninterrupted, while the redress to which one or the other may be entitled can be considered and decided in an appropriate fashion. There is, in general, an obligation to accept an order, even if it is improper, in order that the work may go on.

In the instant case, as I have noted there was no reason given for the refusal of the grievor's request, and indeed, on the material before me, there appears to have been no reason for the refusal. If the grievor's working overtime had in fact been necessary, then as I have suggested, it would have been wrong of him to leave. Again, if the purpose of his conduct had been to flout the authority of his supervisor this too would have been insubordinate and the grievor properly disciplined. The concept of "insubordination" as an industrial offence, however, is abused if it is expanded into a notion of obedience for its own sake. In the instant case the grievor made a request to be relieved following the conclusion of his regular working hours, on apparently reasonable grounds, and where such relief was possible. When his request was refused without reason, it is my conclusion – having regard to the particular circumstances of this case – that the grievor was not guilty of insubordination by leaving work as he did.

For the foregoing reasons the grievance must be allowed. The grievor is entitled to the relief asked.

(signed) J. F. W. WEATHERILL
ARBITRATOR