

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 164

Heard at Montreal, Tuesday, July 8th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

DISPUTE:

Claim by former Warehouseman Grade 2, C.A. Boland, St. John's, Newfoundland, for reinstatement in the service of the Company with full rights and loss of wages.

JOINT STATEMENT OF ISSUE:

Mr. C. A. Boland, Warehouseman Grade 2, St. John's, Newfoundland was discharged January 15, 1969 as an undesirable employee – accumulation of 60 demerit marks.

The Brotherhood claims that the Company has violated Article 9.2 of the Agreement and requested that Mr. Boland be reinstated with full rights and loss of wages.

The Company declined the claim.

FOR THE EMPLOYEES:

(SGD.) E. E. THOMS
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

P. A. McDiarmid – Labour Relations Assistant, Montreal
B. Noble – Senior Agreements Analyst, Montreal
J. J. Connors – Foreman, St. John's

And on behalf of the Brotherhood:

E. E. Thoms – General Chairman, Freshwater P.B.
W. C. Y. McGregor – International Vice-President, Montreal
E. F. Downard – International President's Special Assistant, Montreal
G. D. Noseworthy – Local Chairman, Argentina
M. J. Walsh – Local Chairman, St. John's

AWARD OF THE ARBITRATOR

The grievor, an employee of some 27 years' seniority, was discharged effective January 15, 1969, because he had accumulated 60 demerit marks and was considered an undesirable employee. The accumulation of 60 demerit marks resulted from the assessment of 30 demerit marks for "failure to protect assignment December 23, 1968 and to report absences to January 15, 1969." Under the company's system of discipline, an employee who accumulates 60 demerit marks is dismissed. The grievor had accumulated 30 demerit marks previously, and the question before me is whether the company had just cause to assess him a further 30 demerit marks, and thus to discharge him, as a result of this "culminating incident".

Monday, December 23, 1968, was a regular working day for the grievor. He did not report for work, and has stated that he was ill and was confined to bed on that day. He has no telephone and did not advise the company that he was ill, or that he would not be in to work. At the investigation conducted by the company he had told an employee named Pittman to tell another employee named Atkins to tell the foreman he would not be in. He stated that he told Mr. Pittman this when he was "getting aboard the bus to go home", although it is not clear just when this was. In any event, the foreman was not notified of the grievor's absence either on December 23 or on any subsequent day.

On December 27 the grievor received a prescription for some medicine for his sore chest and throat, and on December 28 he went to the doctor's office and was given a note to the effect that he was unfit for work from December 26 until January 8. On December 30 he went to the company's terminal to collect his pay cheque. He was asked when he would report for work and replied that he hoped to get back the next day if he could. He did not report for work the next day, nor did he advise the company that he would be unable to work. There is no suggestion that he made any attempt to advise the company of his absence on this occasion. On January 9, 1969, he was advised to report to the company's office the following day, but he did not do so, since he was hit by a car on January 9 and was at home in bed, although not under a doctor's care. He was interviewed on January 15, and subsequently discharged.

The company has not questioned the doctor's certificate indicating that the grievor was unable to work from December 26 until January 8. The certificate not being challenged, it must be concluded that the grievor had sufficient excuse for his absence from work during that period. It may be as well that his own statement that he was ill as well on December 23 and 24, should be accepted, although no medical certificate was offered with respect to it. The grievor's illness, however, does not excuse his failure to notify the company that he would be absent. His effort to notify the company through Mr. Pittman must be described as at best half-hearted, and there is no excuse whatever for his failure to notify the company following his visit to the terminal to collect his cheque on December 30.

In my view there can be no question that the grievor had failed in his responsibilities to the company, and that he was properly subject to some discipline on this account. The question is one of the severity of the discipline imposed. In this connection, regard may be had to his record, which reveals a number of occasions on which he was disciplined for absenteeism in recent years. On July 28, 1966, he was assessed 10 demerit marks for being absent without permission, and on August 8 of that year was assessed 20 demerit marks for the same reason. He then went for one year without discipline, and 20 of the 30 demerit marks then outstanding were cleared. On September 1, 1967 he was cautioned for the same reason and on September 30, 1967, he was assessed 20 demerit marks for absence from duty without leave and failure to report. On August 30, 1968, he was suspended for two months for the same offence. No demerit marks were then assessed, but his total then stood at 30 marks. At the time of this suspension, it seems, he was advised that he would be discharged on the next occasion.

This record reveals five previous occasions over a period of two and one-half years on which the grievor was absent without leave or failed to report. At the time of his discharge, nearly one-half the year had passed since he was last subject to discipline. Clearly the record was bad, but in my view it cannot be said that his absences were so frequent as to deprive him of continued employment. This is particularly so having regard to the grievor's very substantial seniority with the company. It is my conclusion that there was not, in the circumstances, just cause for the discharge of the grievor. There was, however, just cause for the imposition of some discipline, and in my opinion the assessment of 20 demerit points would have been appropriate. Having regard to all of the circumstances, it is my view that while the grievor is entitled to reinstatement, his conduct has disentitled him to any compensation for loss of earnings.

It is accordingly my award that the grievor be reinstated in employment forthwith, with full seniority, but without compensation.

(signed) J. F. W. WEATHERILL
ARBITRATOR