

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 216

Heard at Montreal, Tuesday, June 9th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Brotherhood claims that Messrs. A.J. Olson and D.G. Akers of Prince Albert, Saskatchewan, were improperly disciplined when their records were assessed twenty demerit marks for refusing to carry out an order of their Supervisor in October 1969.

JOINT STATEMENT OF ISSUE:

On October 1, 1969 the Company received a shipment of flour at Prince Albert in trailer CN 784155 consigned to the Prince Albert Co-operative the employees of which firm were on strike at that time. Messrs. Olson and Akers were the only qualified tractor-trailer drivers at Prince Albert and on October 2, 1969 Mr. Olson was ordered to deliver the trailer to the Co-operative. He drove the trailer up to the picket line at the struck plant but refused to cross it and returned the trailer to the Company terminal. Mr. Akers was then ordered to effect delivery of the trailer and he refused. Both employees were assessed twenty demerit marks for their refusal to carry out their Supervisor orders.

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.

W. S. Hodges	– System Labour Relations Officer, Montreal
H. Clefstad	– Labour Relations Assistant, Winnipeg
N. H. Ashton	– Terminal Traffic Manager, Prince Albert
G. A. Carra	– Regional Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. A. Pelletier	– Executive Vice President, Montreal
P. E. Jutras	– Regional Vice President, Montreal
H. L. Critchley	– Representative, Edmonton
F. C. Johnston	– Regional Vice President, Toronto
R. Beckwith	– Local Chairman, Toronto
T. N. Stol	– Local Chairman, Vancouver
R. Henham	– Regional Vice President, Vancouver

AWARD OF THE ARBITRATOR

The material facts are somewhat different with respect to the two grievors, and their cases must be considered separately, although the fundamental disciplinary issues are related. On the morning of October 2, 1969 Mr. Olson, a qualified but not an experienced tractor-trailer operator, was assigned to deliver a shipment of flour to the Prince Albert Co-op. The Company had been advised that the Co-op desired delivery as soon as possible. There was, however, a strike of employees at the Co-op, and there is no doubt that the possibility of some untoward incident occurring was considered by both parties. The Terminal Traffic Manager went to the Co-op, passed through the picket line without incident, and subsequently met with a representative of the Union involved in the strike, and with the picket captain. The Union representative advised the traffic manager that the pickets could not stop delivery, as they had been enjoined from such activity by Court Order.

Mr. Olson accompanied by his supervisor, had parked the company tractor-trailer about a block away from the Co-op. The traffic manager, having received the above advice, went to Mr. Olson and assured him there would be no violence and the truck would not be stopped. Mr. Olson's duties were clear to him, and he had been advised that failure to follow instructions would result in disciplinary action. Mr. Olson proceeded to the entrance to the Co-op premises, and began to make a left turn from the street onto those premises. At the time, he was accompanied in the cab by his supervisor, and the traffic manager, together with the striking Union's representative and the picket captain were standing with some picketers on the sidewalk. As Mr. Olson was about to turn onto the Co-op premises, one of the picketers, a woman, ran across the sidewalk from one side of the driveway to the other. The woman was crying. There is no evidence of any action by the picketers direct toward Mr. Olson or the progress of the tractor-trailer. Once she had crossed over the driveway in front of the truck, the woman did not block the right-of-way, and there seems to have been nothing to have prevented Mr. Olson from proceeding. Mr. Olson, however, refused to do so, and advised the supervisor that he would not make the delivery. He was given express instructions by the traffic manager to make the delivery, but refused to do so. He was then instructed to return the unit to the terminal. Discipline was subsequently imposed, following an investigation. Mr. Olson's reason for refusing to follow instructions was that he was afraid of violence, either then or in the future to himself or his family.

Certainly where an employee does have a reasonable fear for his own safety he may be justified in refusing to carry out certain instructions, and this principle would no doubt extend to include cases of reasonable fear for the safety of others. In the instant case, however, the [] to support the fears expressed by the grievor other than this might happen as the result of some unspecified but surely unlawful conduct on the part of some unknown person. This "danger", if it can be called such, is not a hazard for which the company, attempting to carry on its business in the usual way, can be expected to bear the responsibility. On the evidence, this is simply not a case in which refusal to carry out proper instructions can reasonably be justified. Accordingly, the company was justified in imposing discipline, and in my view the penalty imposed fell within the range of reasonable disciplinary responses to the situation.

The case of Mr. Akers is different. He was given instructions on the morning of October 3, 1969, near the end of the night shift, to make the delivery of flour on overtime, shortly after 8:00 A.M. These instructions were given in the terminal manager's office. Mr. Akers refused to accept these instructions saying (according to his own statement) "we had a Union meeting last night and we would not like them to cross our picket lines and we will not cross theirs. I could come into bodily harm and be blackballed from any other jobs which is represented by a Union". Although Mr. Akers did not make his refusal right at the delivery site, as did Mr. Olson, there can be no doubt that it was a refusal to accept instructions. There is nothing to suggest that Mr. Akers' fears of physical or economic harm were any more justified than those of Mr. Olson. Discipline was properly imposed in this case as well.

It appears that, in the investigation held in the case of Mr. Akers, he was not allowed union representation. This unfortunate circumstance would, in my view, require the conclusion that there was no proper "investigation" within the meaning of Article 24.2 of the collective agreement. Mr. Akers however, was a probationary employee at the time of the incident. By virtue Article 24.1, no investigation was required in his case. Thus, even if it be concluded that there was no investigation, it would still have been open to the company to impose discipline on Mr. Akers, as it did.

For the foregoing reasons, the grievances must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR