

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 219

Heard at Montreal, Tuesday, June 9th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The reinstatement of Motorman Reginald Peddle with full rights and all loss of wages.

JOINT STATEMENT OF ISSUE:

On October 23, 1969, Motorman Reginald Peddle was discharged according to Mr. Peddle's discharge notice "Discharged account accumulation of 70 demerit marks". The Brotherhood claims that the accumulation of demerit marks was not proper in that on March 27, 1969 when 20 demerit marks were assessed with a suspension, that the double penalty was not legal. The Brotherhood also claims that the October 23, 1969 assessment of 20 demerit marks were not warranted and requested reinstatement for Mr. Peddle with full rights and all loss of wages.

The Company declined the Brotherhood's request.

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	– System Labour Relations Officer, Montreal
H. E. Dickinson	– Terminal Traffic Manager, St. John's
W. F. Harris	– System Driving Supervisor, Montreal
L. V. Collard	– System Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

E. E. Thoms	– General Chairman, Freshwater P.B.
M. J. Walsh	– Local Chairman, St. John's
M. Peloquin	– Administrative Assistant to International Vice-President, Montreal

AWARD OF THE ARBITRATOR

As will be seen from the joint statement of issue, there are two matters to be decided: 1) the correctness of the grievor's record, having regard to the penalty imposed on March 27, 1969; and 2) the propriety of the assessment of 20 demerit marks against him on October 23, 1969.

As to the first question, the grievor's record indicates that 10 demerits were assessed against him on November 5, 1968, 20 demerits on March 19, 1969, and 20 demerits on March 27, 1969. At the time of the last-mentioned, as well as the assessment of 20 demerits, the grievor was considered as being on suspension during his time out of service. This, it is said, constitutes a "double penalty". It is true that many Arbitrators or boards of arbitration have held that it is improper to impose a double penalty for the same offence. By this it is meant, I think, that once a penalty has been decided upon and imposed, it is no longer open to an employer to reconsider the matter and impose a further penalty. It is not to say, however, that an employer cannot properly impose a "complex penalty", as in the form of the demerits-plus-suspension imposed on the grievor on March 27, 1969. The question is simply whether the penalty, complex or otherwise, is one which there is just cause to impose. In my view, the penalty imposed on March 27, 1969, was not improper simply because it took the form of an assessment of demerits together with a suspension. The right of the employer to hold an employee out of service pending investigation is a matter sometimes dealt with in collective agreements, but no argument was presented on an issue of that sort and I make no determination in that respect.

In any event, the discipline imposed on the grievor on March 27, 1969, was not made the subject of a grievance. Having regard to the time limits set out in Article 9 of the collective agreement, there can be no doubt it is now too late for that aspect of the grievor's record to be questioned. Accordingly, it must be held that, by October 23, 1969, the grievor's record showed a total of 50 demerit marks outstanding.

The next question which arises is that of the propriety of the assessment of 20 demerit marks on October 23, 1969. The grievor, an employee of nearly five years' seniority, was classified as a motorman. He was assigned to mail runs 301 and 302 on three days per week, and to the pick-up and delivery of express at St. John's for two days per week. He was disciplined over certain alleged failures relating to the operation of the mail runs, and in particular for his failure to explain certain delays. The mail run is a lengthy trip, on which a tractor-trailer is operated, and by which mail is carried on contract for the Post Office. Fast operation is important so that the mail may be collected and distributed according to scheduled arrangements. The route is under consideration by the Post Office, and it is of importance to the company and the employees, as well as to those who distribute and those who receive the mail, that it be operated efficiently and according to schedule. It is also important that reports of delays be made as required.

The grievor was investigated with respect to certain failures to report delays on the mail runs. He omitted, or failed to complete reports of delays on October 10, 11 and 12, 1969. In his investigation, he was asked to account for these failures. In some cases he accounted in part for unreported delays, and in others he could give no account for them. The result is not only that the trips were delayed, but also that the grievor was paid for time not accounted for. In one case he admittedly made an excessive claim for one hour's time, although he explained this as a mistake. As to his frequent failure to show amounts of delay time, contrary to written instructions, he indicated that he did not understand what was required, an explanation which, having regard to the grievor's experience, I find difficult to credit.

There can be no doubt that the grievor did, in a number of respects, fail to carry out his duties adequately, and for this some discipline was properly imposed. The assessment of 20 demerit marks would appear to be a serious matter, but the grievor's record reveals a number of instances of discipline for unsatisfactory performance. In my view the assessment in this case was not unreasonable.

The assessment of 20 demerit marks on October 22, 1969, must stand. It follows that his record then properly showed a total of 70 demerit marks, and, acting according to its system of discipline, the company discharged the grievor.

For the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR