

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 256

Heard at Montreal, Tuesday, January 12th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Brotherhood claims that Mr. J.A. Ferguson of Bathurst, N.B., was improperly disciplined when his record was assessed 20 demerit marks for refusing to comply with his supervisor's instructions May 20, 1970.

JOINT STATEMENT OF ISSUE:

On May 20, 1970 Mr. J.A. Ferguson, motorman, Bathurst, N.B., was instructed to deliver a shipment consigned to Lounsbury Company's furniture and clothing store at Bathurst. The employees of the Automotive Division of Lounsbury Company were on strike but not the employees of the firm's furniture and clothing store. On arrival at Lounsbury Company's premises Mr. Ferguson refused to effect delivery of the shipment as employee of the Automotive Division of the Company had set up a picket line at the entrance to both premises. For refusing to effect delivery as instructed by his supervisor his record was assessed 20 demerit marks.

FOR THE EMPLOYEES:

(SGD.) J. A. PELLETIER
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

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

There appeared on behalf of the Company:

D. O. McGrath	– System Labour Relations Officer, Montreal
D. J. Matthews	– Labour Relations Assistant, Moncton
J. O. Decelles	– Superintendent Express, Campbellton
G. F. Hachey	– Terminal Traffic Manager, Bathurst
J. K. Culkin	– Manager Administration Services, Linguistic Services, Montreal

And on behalf of the Brotherhood:

L. K. Abbott	– Regional Vice President, Moncton
J. A. Pelletier	– National Vice President, Montreal
W. Vance	– Representative, Moncton

AWARD OF THE ARBITRATOR

There is no doubt that the grievor did in fact refuse to carry out the clear and lawful instructions of his employer. The only circumstances which would relieve him of the obligation of carrying out such an order would be that to do so would subject him to an unreasonable risk of harm. Much was made by the parties as to the necessity or lack of necessity for the Company's requiring a delivery to be made at the premises of an employer, some of whose employees were on strike. Whether the Company was obliged to perform this service or not, there can be no doubt that it was entitled to require its employees to make pick-ups and deliveries at its customers' premises, and it was entitled to expect its employees to carry out such directions.

The parties also addressed themselves to the matter of certain policies which had been discussed between them relating to procedures for avoiding difficulties in the volatile situations which can arise in cases such as this. Such policies, however, are not part of the collective agreement, and adherence or non-adherence to them is not determinative of the issue. Perhaps the situation would be different if it could be said, in a particular case, that the Company deliberately created a situation for the purpose of embarrassing an employee, but it cannot be said, on the material before me, that such was the case here. In any event, it is clear that the Company was properly attempting to carry on its business, and that the grievor refused to carry out his instruction, given in the course of that business.

The grievor gave the following as his reasons for refusal to carry out his instructions.

Because it is against my principles to cross the picket line and further more I am a Union Member and I am associated with all these fellow workers and I have to live with these people not only at work or performing my duties also my social life will be cut out for a long while if I don't do as other members of Union do, that is respect the picket line, and I also think that this would involve my family, because my wife and I usually go in parties at night and different clubs as the Canadian Legion, and I don't think me and the wife would enjoy ourselves sitting in the corner by ourselves on account of not being able (to be) a good Union member. I am also fearful of other reprisals such as bodily harm, property damage and threats of violence if I cross the picket line which I really think would happen.

When asked whether he had been threatened in any way at any time, in connection with the crossing or possible crossing of the picket line, he replied:

No, except that I received a few phone calls inquiring as to if I was going to cross the picket line, and if I did, I would be a "SCAB", and they also said "It's too bad that you had to be the Goat, since there are so many people in the City of Bathurst that knows you."

In my view, the grievance of Mr. Olson in **Case No. 216** is very similar. In that case, it was said.

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, there is nothing to support the fears expressed by the grievor other than his own surmise that something 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 same must be said in the instant case. The fear of violence to himself or his family seems quite clearly not to have been the most compelling reason for his refusal to do his job. That fear in itself was not sufficiently grounded to justify such refusal. As in **Case No. 216**, it was a matter of surmise that something might happen as the result of some unspecified but surely unlawful conduct on the part of some unknown person.

In the circumstances, the Company was justified in imposing discipline on the grievor, and the grievance must accordingly be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR