CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 262

Heard at Montreal, Tuesday, February 9th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

EX PARTE

DISPUTE:

Claim by St. John's, Nfld. Stores Employee, Mr. F.G. Carter and nine other employees for loss wages incurred in Pay Period eighteen (18) 1970 and all loss wages for all employees at the St. John's Stores as a result of penalty of lost time since Pay Period Eighteen (18).

EMPLOYEES' STATEMENT OF ISSUE:

For Pay Period Eighteen (18) 1970, Mr. F.G. Carter and nine other employees were docked various amounts of wages that were actually worked.

The Brotherhood claimed the Company violated Article 9.1 and Article 12.6 and requested the payment of the loss wages and payment of all subsequent loss wages incurred by the time-deduction policy.

The Company has denied the Brotherhood's request.

FOR THE EMPLOYEES:

(SGD.) E. E. THOMS
GENERAL CHAIRMAN

There appeared on behalf of the Company:

P. A. McDiarmid	– System Labour Relations Officer, Montreal
L. V. Collard	– System Labour Relations Officer, Montreal
J. J. Groves	– Employer Relations Officer, Purchases & Stores Department, Montreal
P. J. Mackey	– Formerly Superintendent Purchases & Stores, St.John's
A. F. Ronayne	– General Foreman, Stores Department, St. John's,

And on behalf of the Brotherhood:

E. E. Thoms	– General Chairman, Freshwater, P.B.
M. J. Walsh	– Local Chairman, St. John's
W. T. Swain	– General Chairman, Montreal

AWARD OF THE ARBITRATOR

During the pay period referred to, the grievors arrived at work late on a number of occasions. The case has been presented with particular respect to Mr. Carter, who clocked in after returning from lunch on September 9, 1970, at 1:04 p.m. His meal hour was from 12:00 to 1:00 p.m. He was paid only from 1:15 p.m., although he punched in and began work, according to his statement, at 1:04 p.m.

What is really in issue is the company's policy with respect to payment of employees reporting late for work. This policy was enunciated in a notice dated August 27, 1970, as follows:

> As you are all aware, the time clock has been in operation since 15 July 1970.
>
> Effective immediately, employees reporting late for duty will have their time deducted on the following basis. Between 1 and 14 minutes, time deducted will be 15 minutes; between 15 and 29 minutes, time deducted will be 30 minutes and so on in 15 minute increments.
>
> Employees will record time only on their own card. Anyone deviating from this practice will be subject to disciplinary action.

The union contends that under this policy the company is imposing a penalty without investigation, contrary to Article 9.1 of the collective agreement, and that the penalty imposed, which is in effect a fine is not one which it is entitled to impose. The union is correct on both counts. Article 9.1 provides that employees who have completed their probationary periods will not be disciplined or discharged without an investigation. Here, the company has abbreviated the working time of employees by the application of a general policy relating to lateness without any inquiry into the circumstances of the individual cases. Certainly employees who report for work late may be subject to discipline, but the collective agreement specifically requires that there be an investigation in each case. The policy enunciated in the notice of August 27, 1970, ignores this requirement, and is contrary to the collective agreement. Discipline which purports to be based on this policy must be deemed to be of no effect, and employees penalized thereby are entitled to compensation.

It was said on behalf of the company that the grievor's schedule on the day in question was to work from 1:15 p.m. This, however, was only by virtue of his having failed to report, as he ought to have done, at 1:00 p.m. It was because of this failure that his schedule was deferred by fifteen minutes. In effect, he was suspended for that time. The notice of August 27 however, did not indicate that there would be a suspension, but rather that time would be deducted. For this, there was no Justification.

By notice dated December 9, 1970, the company advised employees that those reporting late would not be expected to report for duty until the time for which they were being deducted had expired. This meant, with respect to an employee reporting up to fifteen minutes late, that his schedule was reduced by fifteen minutes, and so on, in fifteen-minute increments. With this, the company effectively altered the schedules of employees, and in a manner not inconsistent with the collective agreement. Insofar as employees affected by this grievance have lost earnings after December 9, 1970, it is by reason of their own schedules, and not in violation of the collective agreement.

Prior to December 9, 1970, however, the company's refusal to permit the grievors to work, or to pay them for work performed during the times in question, was plainly a disciplinary measure imposed contrary to the provisions of the collective agreement, and for which the employees affected are entitled to recover, much as they may have been subject to discipline imposed in the proper fashion.

The grievors are entitled to recover for loss of earnings imposed pursuant to the company's policy of August 27, 1970, for the period up to December 9, 1970.

(signed) J. F. W. WEATHERILL
ARBITRATOR