

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 323

Heard at Montreal, Tuesday, November 9th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Discipline assessed Steward–Waiter A.E. Kelly.

JOINT STATEMENT OF ISSUE:

On January 25, 1971, it was necessary to replace regular Tempo equipment on Train No. 147 from Toronto with conventional equipment. Included was a cafe coach lounge offering both Bar and Cafe services.

The Company contends that Steward–Waiter Kelly was replaced by another employee when he would not assure the Operations Supervisor that he would operate both services of the cafe coach lounge. Following a hearing held on February 8 in connection with the matter, Mr. Kelly's record was assessed with 30 demerit marks.

The Brotherhood claims that the 30 demerit marks assessed Mr. Kelly's record should be removed and that he be compensated for the regular assignment for January 25, 1971. The Company declined the claim.

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
W. J. Long	– Labour Relations Assistant, Toronto
A. Timmins	– Operations Supervisor, Customer & Catering Services, Toronto
A. Czerwinski	– Crew Supervisor, Customer & Services, Toronto
T. W. Foster	– Platform Inspector, Customer & Catering Services, Toronto
H. O. Hayes	– Platform Inspector, Customer & Catering Service, Toronto

And on behalf of the Brotherhood:

J. D. Hunter	– Regional Vice-President, Toronto
A. E. Kelly	– Grievor

AWARD OF THE ARBITRATOR

The grievor, an employee of some five years' service in the department, and president of the local union, was assessed thirty demerit marks as a result of an incident which occurred on January 25, 1971. On that day the grievor reported to work in accordance with his assignment, which was to work as a steward-waiter on train 147 ex Toronto. The service usually provided on train 147 is Tempo Equipment, which includes separate cafe and bar service. In the normal course, it seems, the grievor would have operated the cafe service.

Shortly after reporting for work, the grievor was advised that the Tempo Equipment was not available, and that conventional equipment would be used. This consisted of cafe coach lounge 3038, which is designed for one man operation of a combined cafe and bar service. The grievor was advised that the other employee, a Mr. Trotter (who would have worked with the grievor on the Tempo equipment) would be released (and paid), and that he, the grievor, would operate car 3038 alone. There is a conflict in the evidence as to whether or not the grievor was then given the necessary keys, but this conflict, in my view, need not be resolved.

The grievor was displeased with this arrangement, and indicated that he had come to perform his assignment, to operate cafe service, and that that was what he would do. Again, there is a conflict as to precisely what was said, but it seems clear from the grievor's own statements that he took the position he would be required to operate the cafe service and not more. Subsequently, however, he has acknowledged that if he had gone out with the train, he would have been obliged to provide passengers with whatever service they required. His position is that he was prevented from doing this because he was sent home. He was sent home because he would not undertake to operate the bar, as well as the cafe service. The grievor also raised the question as to the sending home, with pay, of the other employee, while he, the grievor, was to be required to provide both cafe and bar services by himself. This complaint is certainly understandable. The company, however, took the position that the equipment was designed for one-man operation and that the grievor was to be assigned to it.

The rights or wrongs of the substitution of equipment, notice of the change, or manning of the cafe coach car are different matters from those before me, and I make no determination as to them. The union quite properly acknowledges that in the circumstances of this case it was the grievor's obligation to follow instructions, and to grieve later if he wished to do so. The instructions were clear, namely to take car 3038 and to provide cafe and bar service. The grievor indicated he would perform his assignment but there is no doubt (although the evidence as to his precise words is to some extent in conflict), that the effect of what he said was that he would operate the cafe service only. He may not have said, in so many words "I will not operate the bar service", but that is the impression he gave, and that he must have known he was giving. In the circumstances, I find that the grievor did in fact refuse to carry out a significant portion of his assignment.

In circumstances such as this, it is surely wisest for the supervisor to put the matter to the employee as precisely as possible. In this case, the grievor seems not to have been asked whether he was prepared, at the time, to carry out the functions of Steward-Waiter on car 3038 by himself, including the operation of bar service. While this might have avoided some of the ambiguity in the situation, it is nevertheless the case, as I have found, that the grievor's action and statements amounted to a refusal to carry out that portion of the assignment.

For this he was properly subject to discipline. It is to be noted that he did have some cause for complaint (whether or not there had been any violation of the agreement), and that the grievor's personal conduct was quite proper at all times. In the circumstances, it is my view that the penalty imposed was unduly severe. There were no representations as to the reduction of the penalty, however, and I therefore make no determination of that matter. If the penalty is to be referred to in any future case, it should be considered in the light of this award.

The company also charged the grievor with having submitted a time slip in connection with train No. 147 on January 25, and the return train No. 142 the following day. Whether or not there was any justification for the claim, it should be clear that in the circumstances the fact of making it was not improper, since it so obviously related to the well-known events that had taken place. There was no merit in this charge, and nothing was made of it at the hearing.

For the reasons set out above, however, it must be my conclusion that the grievor did refuse to carry out a significant part of the directions given him, and the grievance is therefore dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR