

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 365

Heard at Montreal, Tuesday, June 13th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Brotherhood claims the Company violated Article 9 in the 6.1 Agreement when it assessed "Caution" against the record of Motorman R. Grouchy, St. John's, Newfoundland.

JOINT STATEMENT OF ISSUE:

On January 28, 1972, Motorman R. Grouchy was the driver of Unit 70362 which was involved in an accident which left the left side of Unit 70362 damaged and the left exhaust damaged.

An investigation was held in the matter on February 7, 1972 at which time the Grievor stated he was not aware of the charges against him.

On February 8, 1972 the Grievor's record was assessed a "Caution".

The Brotherhood claims violation of Article 9 in that specific charges was not laid against Mr. Grouchy and this objection was raised by Local Chairman Walsh (Fellow employee) at the investigation and the Brotherhood claims the accident was caused by improper tractioned tires.

The Brotherhood requested that the "Caution" be removed from the Grievor's service record.

The Company has denied 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. Peat – Employee Relations Supervisor, St. John's
D. MacDonald – Agreements Analyst, Moncton
W. F. Harris – System Driving Supervisor, Montreal
B. Lynch – Shed Foreman, 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
M. Pelouquin – Administrative Assistant to International Vice-President, Montreal

AWARD OF THE ARBITRATOR

On the evidence, it seems clear that the accident in question was caused by the grievor's careless and improper acceleration of his vehicle. The claim that the accident was due in some way to the tires on the grievor's vehicle is not supported by the evidence; there is a conflict as to the condition of those tires, but in any event there has not been shown to be any connection between them and the accident. In my view, the grievor was careless and discipline was properly imposed. The discipline imposed would appear to have been the least possible, that is a "caution".

My conclusion is based on the evidence properly before me. At the hearing the Company sought to adduce evidence of the recording of the tachograph connected to the vehicle in question. Such evidence would certainly be relevant in a matter of this sort, but it had not been among the materials shown to the General Chairman when he made a request, pursuant to Article 9.2 of the collective agreement, to be shown "all the evidence" in the case. The Company acted in good faith, and it was not until shortly before the hearing that it considered the recording of the tachograph to be of importance. It was not, however, then shown to the Union, and it was my ruling that it could not in the circumstances, be adduced at the hearing.

It was contended by the Union that Article 9.2 of the collective agreement was not complied with in that the grievor was not given proper notice of "the charges against him". The grievor was advised to report "for the purpose of investigation into the Motor Vehicle Accident Report dated January 28, 1972 resulting in damage to Unit 70362". There can be no doubt that the grievor knew what the investigation was about, and it is perfectly clear that such an investigation put his own conduct in question. It is clear from Article 9.1 that discipline may not properly be imposed until after an investigation has taken place. It is sufficient for the purposes of the notice of investigation under Article 9.2 that an employee know the subject matter, and be aware that he may be required to defend his own conduct. There was nothing unfair to the grievor in the proceedings which were held, and the provisions of Article 9 were, in my view, complied with.

For the foregoing reasons it must be concluded that there was just cause for the discipline imposed, and that there was no violation of the procedural provisions of the agreement.

The grievance is accordingly dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR