

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 468

Heard at Montreal, Wednesday, September 11, 1974

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Twenty (20) demerit marks assessed to trainmen J.D. Therriault and D. Morais.

JOINT STATEMENT OF ISSUE:

On April 19th, 1974, Conductor Therriault and Brakeman Morais absented themselves from their usual calling place and were not available for their assignment when called at 1300 hours at Silver, Menehek Subdivision in violation of General Instruction No. 22 of the Current Time Table No. 14. They were subsequently located in the Apollo Tavern at Schefferville, P.Q.

An investigation was held on April 23rd, 1974, and discipline of forty (40) demerit marks was assessed on April 29th, 1974.

The Union appealed the discipline assessed on the grounds of employees past record and that they were available to take their call had they not been removed from service.

The Union filed a grievance. The Railway reduced the discipline assessed from forty (40) to twenty (20) demerit marks through the grievance procedure and maintains that the remaining discipline is justified.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) J. H. BOURCIER (SGD.) F. LeBLANC

GENERAL CHAIRMAN SUPERVISOR - LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin - Counsel

F. LeBlanc - Supervisor, Labour Relations, Sept-Îles

T. Leger - Assistant Labour Relations, Sept-Îles

R. Morris - Trainmaster, Sept-Îles

And on behalf of the Brotherhood:

J. H. Bourcier - General Chairman, Sept-Îles

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AWARD OF THE ARBITRATOR

There is no serious dispute as to the facts, and it is clear that the grievors, while subject to call, were absent from their usual calling place and not immediately available for call. In the circumstances, it is understandable that they did not expect to be called when they were called, and it may

also be noted that they were located within a short time of the call. In my view, even the reduced penalty of twenty demerits was severe in this case.

In this case, however, there was in fact an agreement between the Company and the Local Vice-Chairman, who must be considered to be a Union officer having apparent authority to make such agreement, reducing the penalty from forty demerits, as originally assessed, to twenty. This reduction was accepted, and in my view constituted a settlement of the grievance. For that reason, I conclude that the matter is settled and no longer arbitrable, and that the grievance must therefore be dismissed. It should be noted however that this does not involve the determination that the twenty-demerit penalty was improper. As I have indicated, I consider it to be severe, given all the circumstances.

(signed) J. F. W. WEATHERILL

ARBITRATOR