CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 511

Heard at Montreal, Tuesday, September 9, 1975
and Wednesday, October 15, 1975

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Discipline assessed record of Locomotive Engineer P. Seagris, February 9, 1975.

JOINT STATEMENT OF ISSUE:

On Sunday, February 9, 1975, Locomotive Engineer Seagris worked is assigned 1000 hours yard transfer assignment. After completing certain work the crew on this assignment reported to the Yardmaster at Neebing Yard Office for further instructions, at which time Locomotive Engineer Seagris was reported to have used derogatory language towards the Yardmaster.

After conducting an investigation, the record of Locomotive Engineer Seagris was assessed with thirty demerit marks for insubordination and time out of service to count as discipline.

The Brotherhood appealed the discipline on the grounds that "the discipline assessed Locomotive Engineer P. Seagris was extremely severe." The appeal was declined by the Company.

FOR THE EMPLOYEE:

(SGD.) A. J. SPEARE
GENERAL CHAIRMAN

FOR THE COMPANY

(SGD.) S. T. COOKE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company..

A. J. DelTorto	– System Labour Relations Officer, Montreal
M. DelGreco	– Labour Relations Assistant, Montreal
J. A. Clark	– General Superintendent Transportation, Winnipeg
J. A. Cameron	– Regional Labour Relations Officer, Winnipeg
E. G. Wilkins	– Superintendent, Thunder Bay
J. K. Almdal	– Trainmaster, Thunder Bay

And on behalf of the Brotherhood:

A. J. Speare	– General Chairman, Edmonton
E. J. Davies	– Vice-President, Montreal
P. Seagris	– Grievor

AWARD OF THE ARBITRATOR

The first question to be answered in a case such as this is whether there did in fact exist any grounds for the imposition of discipline on the occasion in question. In this case, the issue is as to the nature of the remarks made by the grievor to the Yardmaster at Neebing Yard Office on February 9th, 1975. The grievor had left his engine on Track N-25, so that it was in a position which would give him easiest access to the facilities, of the Yard Office. There was considerable discussion at the hearing of this matter about the instructions which had been given to the crew, and about the route which was followed and the reasons for leaving the engine on Track N-25. It is sufficient for the purposes of this case to say that, while it would be understandable that the Yardmaster might question the presence of the engine on N-25, it could not be said that the grievor had violated instructions in that respect. In any event, it was not the yarding of the engine which was the basis of the discipline assessed against the grievor.

The evidence of the yardmaster is that when the grievor came past his desk, near the entrance to the booking-in room, he asked why the engine was on Track N-25. According to this evidence the grievor replied with sarcastic remarks and in a loud tone of voice that it was none of his (the Yardmaster's) business, that he didn't know what he was talking about, and to shut his mouth. There is other evidence corroborating that remarks of this nature were made, and that both the grievor and the Yardmaster spoke in raised voices. It appears from the evidence that the grievor, as well as making remarks of the type described, replied to the Yardmaster's enquiry that he didn't have to climb through cars and walk through snow, being by way of explanation for leaving his engine on Track N-25. There would be nothing wrong with his response to that extent, but, having regard to all the evidence, I find that the grievor went further and did make abusive remarks to the Yardmaster, denigrating him and his authority. There was no real justification or provocation for this outburst.

The grievor, in cross-examining the Yardmaster, put it to him that his evidence was not truthful, but the Yardmaster denied this, and was unshaken in his testimony. In fact, that testimony was not contradicted, in this aspect at least, in any substantial way. The other evidence which was adduced by the Union does not materially alter the effect of the Company's evidence on this central point. I accept the evidence of the Yardmaster, and I find, on the evidence, that the grievor did use derogatory language to him on the occasion in question. I find that there did exist grounds for the imposition of discipline on the grievor.

The next question which arises is as to the severity of the discipline imposed. Under a system of discipline in which an employee may be discharged for the accumulation of 60 demerit marks, the assessment of 30 demerit marks is a severe penalty. Where the assessment of a penalty is involved, however, regard may properly be had to an employee's past record. Repetition of offences would justify the imposition of a more severe penalty. The grievor is an employee of some twenty-four years' service with the Company. He has been disciplined on a number of occasions during the past ten years, and indeed was discharged, on account of accumulation of demerit marks, in June of 1971. He was reinstated when the Company reduced the assessment of 30 demerits for refusal to comply with a yard foreman's instructions, to one of 15 demerits. In the circumstances of the instant case, it seems clear that the assessment of at least 15 demerits against the grievor's record would have been proper.

When the grievor was reinstated by the Company in the fall of 1971, there were then, as a result of the reduction of the penalty, 50 demerits on his record. In June of 1972, 20 demerits were cleared from his record, and in June of 1973, a further 20 demerits were cleared, leaving 10 outstanding. In December of 1973, 5 demerits were assessed for a rules violation. Later that month, a further 5 demerits were assessed for a similar violation, and in March, 1974, 15 demerits were assessed for a further violation of that sort. His record thus revealed 35 accumulated demerits. With the addition of at least 15 demerits for the incident in question here, there would be 50 demerits then against his record. That would not justify discharge under the system of discipline used by the Company.

I have said that the grievor's conduct on the occasion here in question would justify the assessment of at least 15 demerits. Having regard to the fact that this was the second such offence; that the grievor had, on his earlier reinstatement, given an undertaking with respect to his future good conduct; and that at his investigation relating to the incident in question, he quite improperly refused to answer questions involving an acknowledgment of the Yardmaster's authority, it might be thought that a more severe penalty would be appropriate. On the other hand, having regard to the evidence as to the grievor's actual remarks to the Yardmaster, it might be thought that the incident was more in the nature of a brief flare-up of temper which would reflect, if anything, more discredit on the grievor than on anyone.

In all of the circumstances, I am of the view that a penalty of 15 demerits would have been proper in the circumstances, but that a penalty of 30 demerits was excessive. There was not, therefore, just cause to discharge the grievor in the circumstances. It is accordingly my award that the grievor be reinstated in his employment, without loss of seniority, within two weeks from the receipt of this award by the parties. In the circumstances which have been referred to, however, there is no basis for making any award of compensation for loss of earnings or any other benefits, and the grievor's time out of service should count as suspension. Further, his disciplinary record as of the time of reinstatement should indicate 50 demerits, assessed as of the date of reinstatement.

(signed) J. F. W. WEATHERHILL
ARBITRATOR