

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 550

Heard at Montreal, Tuesday, June 8th, 1976

Concerning

ALGOMA CENTRAL RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

The dismissal of Conductor R. Roffey account accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

Conductor R. Roffey was assigned to the Ditcher Work Train with a schedule of work to be performed over the entire Railway system.

On October 19, 1975 when the Ditcher Work Train tied up at Hawk Junction, Ontario, Conductor Roffey was involved in various work rule violations which resulted in assessment of discipline to his record. This discipline, when added to that already on his personal record, resulted in Conductor Roffey's discharge account accumulation of demerit marks.

Conductor Roffey was assessed the following discipline for incidents that occurred at Hawk Junction on October 19, 1975.

- | | |
|------------------|--|
| 10 demerit marks | For violation of Rule 83 (Uniform Code of Operating Rules) and Radio Operating Instruction |
| 10 demerit marks | for possession of intoxicating beverages in railway work equipment |
| 10 demerit marks | for false reporting of time off duty |

The Brotherhood appealed the discipline on the basis that the investigation was conducted under improper conditions, that the violations were a common practice and that Mr. Roffey has been discriminated against.

The Organization has requested that Conductor Roffey be restored to service and reimbursed for wages lost.

The Company has rejected the argument put forth by the Organization on behalf of Conductor Roffey and has refused to re-instate him.

FOR THE EMPLOYEE:

(Sgd.) J. SANDIE
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) S. A. BLACK
GENERAL MANAGER – RAIL DIVISION

There appeared on behalf of the Company:

- | | |
|-------------|---|
| V. E. Hupka | – Manager industrial Relations, Sault Ste. Marie |
| S. A. Black | – General Manager Rail Division, Sault Ste. Marie |
| N. L. Mills | – Superintendent-Transportation, Sault Ste. Marie |

And on behalf of the Brotherhood:

- | | |
|-----------|--------------------------------------|
| J. Sandie | – General Chairman, Sault Ste. Marie |
|-----------|--------------------------------------|

AWARD OF THE ARBITRATOR

Article 55 of the collective agreement provides that no employee will be disciplined until the charges against him have been investigated. It is provided as well that the employee concerned may select a fellow employee to appear with him, having the right to hear all evidence and ask questions.

In the instant case the grievor, along with others, was called for investigation over the matters which led to his discipline and eventual discharge. He, as well as the others, indicated that he wished representation naming the Union representative he wished to have present. The record of the investigation states that the employees were willing to go ahead with the investigation in the absence of their representatives, rather than have the investigation postponed. In the case of the grievor at least there were a number of charges, of serious import, which could – and did – lead to his discharge. In such circumstances, I think there is an obligation on the Company to ensure that the rights of representation, provided for in the collective agreement, are respected. Some of the material before me suggests that the employees had advised the Company prior to the investigation that representation was wanted. It is also suggested that they were led to believe that cooperation in the investigation and a waiver of their right to representation would make things easier for them. However these things may be (and I do not here make a finding that there was improper inducement by the Company), it is my view that the requirements of the collective agreement as to the investigation were not met. This is so even though the employees indicated they were satisfied with the conduct of the investigation. Such an indication is not really significant in the absence of the proper advice and representation to which they were entitled.

It is my conclusion that the matter was not properly investigated pursuant to the requirements of Article 55. Accordingly, the Company was not entitled to impose discipline on the grievor at the time it did. The demerit marks assessed against him at that time are therefore to be removed, and his discharge, which was a consequence of the accumulation of demerits, set aside. It is my award that the grievor be reinstated in employment with compensation for loss of earnings. This award, however, does not prevent the Company (apart from any restriction there may be in the collective agreement or other) from carrying out a proper investigation of the grievor and taking whatever steps may be appropriate thereafter.

Because of the conclusion I have reached as to the ineffectiveness of the investigation, I do not deal with any of the questions of substance as to the grievor's conduct.

(sgd.) J.F.W. WEATHERILL
ARBITRATOR