

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 576

Heard at Montreal, Tuesday, November 9th, 1976

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim for two (2) days' pay each for Messrs. L.N. Goyer, T.W. Moon, M.J. Parks, T. Dall and P. Williams at their respective straight time rates for November 27 and 28, 1975.

JOINT STATEMENT OF ISSUE:

The grievors were assigned to a temporary Section Maintenance Gang which was established to perform work of a character which is in addition to usual section work.

On November 27, 1975, the grievors were scheduled to unload continuous welded rail. Prior and subsequent to 07:00, their starting time that day, the area was engulfed in a snow, ice and rain storm. Because the grievors felt such adverse weather conditions to be incompatible with performing the scheduled work in a safe manner, they declined to do so. They were sent home and did not work on November 27 or 28. There were no charges leveled against them nor was an investigation held.

The Union contends that the Company violated Section 18.1 of Wage Agreement No. 17 when it suspended and/or disciplined the grievors on November 27 and 28 without having afforded them an investigation.

The Company contends that the grievors were not suspended or disciplined, but that they initiated their own absence from work.

FOR THE EMPLOYEES:

(SGD.) P. A. LEGROS
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

A. D. Andrew – System Labour Relations Officer, Montreal
R. E. Palmer – Track Supervisor, Belleville

And on behalf of the Brotherhood:

P. A. Legros – System Federation General Chairman, Ottawa
W. Montgomery – General Chairman, Belleville
G. D. Robertson – Vice President, Ottawa

AWARD OF THE ARBITRATOR

Article 18.1 of the Collective Agreement calls for a “fair and impartial investigation” before discipline is imposed. In the instant case the issue is whether or not discipline was in fact imposed.

The grievors chose not to perform certain work which was assigned to them. Having regard to existing conditions, it may well be that such refusal was justified. If the grievors had been formally disciplined, then it may be (although I do not decide the question) that such discipline would be set aside.

The Company does not appear to have been under an obligation to find work for the grievors. They would be entitled to assignment in the usual way, having regard to their classifications, and such assignments were made. The assignments were, rightly or wrongly, refused. Unless the Company decided to give them some other assignment, then it was under no obligation to them in that regard. That the employees were sent home does not, in these circumstances, show that discipline was imposed; it simply was the natural consequence of not performing work that was available. There cannot, as a result of this action, be any disciplinary notation on the grievors’ records.

It is therefore my finding that this is not a discipline case, and that Article 18.1 does not apply. The grievance is therefore dismissed.

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