

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 577

Heard at Montreal, Tuesday, November 9th, 1976

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim for removal of discipline assessed, with compensation for time lost by E. Tremblay.

JOINT STATEMENT OF ISSUE:

The Union contends that the thirty demerit marks imposed upon Section Foreman E. Tremblay resulting in his dismissal "For using the CNR Credit Card for personal purposes" was severe and excessive. The Company contends that said discipline was justified.

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
A. Lemieux – Engineer Track and Roadway, Quebec
P. J. Thivierge – Regional Labour Relations Officer, Montreal
C. LaRoche – Employee Relations Officer, Montreal

And on behalf of the Brotherhood:

P. A. Legros – System Federation General Chairman, Ottawa
G. D. Robertson – Vice President, Ottawa
R. Roy – General Chairman, Rivière du Loup

AWARD OF THE ARBITRATOR

The issue here is the assessment of thirty demerits. The result of that assessment was that the grievor had accumulated more than 60 demerits and was discharged. That result flowed from his record, it is not a matter now of reviewing that record, but it is my view that in these cases the ultimate result, that is the discharge, may properly be regarded as being in issue. Put another way, I think that the assessment of demerits is to be reviewed bearing in mind that it really involves the discharge of the employee. For this purpose, of course, it is also proper to have regard to the rest of the employee's record.

There is no doubt as to the facts. The grievor did make use of a Company credit card to make purchases for his own use. His explanation that the Company "owed" him in respect of other expenses is not sufficient. There were proper methods open to him for claiming such expenses. The grievor's improper use of the credit card was an offence and it was, for present purposes, equivalent to theft.

The penalty for that offence has usually been held to be discharge. The grievor is a very long-service employee, and I would hesitate to impose that penalty in this one instance. Discharge, under the Company's system of discipline, follows on the accumulation of 60 demerits. Here, the Company assessed 30, which, in relating to the number leading to discharge, cannot really be called excessive.

The grievor had been subject to discipline on various occasions in the past, although his record was clear, by reason of time free of discipline, as of December, 1972. Then in April, 1974 he was given 30 demerits for what seems to have been negligence, and in June, 1975 he was given 25 demerits for negligence. Twenty demerits had been deleted in April, 1975, as the grievor had had a year free of discipline, so that at the time when the present case arose, the grievor had a record of 35 demerits. It would take a substantial reduction in the present assessment to bring the grievor's cumulative total of demerits below 60. Such a substantial reduction would not be justified, in my view. The assessment of 30 demerits for the offence in question was, it must be said, not excessive.

For the foregoing reasons, the grievance is dismissed.

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