CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 697

Heard at Montreal, Tuesday, February 13, 1979

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Dismissal of Mr. D.R. Nelson, formerly employed as Motorman, Edmonton, Alberta.

JOINT STATEMENT OF ISSUE:

The Company discharged Mr. D.R. Nelson on 19 June 1978 for accumulation of demerit marks which resulted from his insubordination and gross misconduct on May 30th, 1978. The Brotherhood contends that Mr. Nelson's discharge was unwarranted, unjust and severe, and that for these reasons, he be returned to the service of the Company, with full seniority and pay for all time out of service, and that the discipline be reduced to 5 demerit marks.

The Company declined the Brotherhood's request.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. A. PELLETIER	(SGD.) S. T. COOKE
NATIONAL VICE-PRESIDENT	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

C. L. LaRoche	– System Labour Relations Officer, Montreal
R. Monette	– Attorney, Montreal
M. M. Bebee	– Manager, Express, Edmonton
A. R. Hay	– District Manager-Express, Edmonton
W. K. Crutchfield	– Assistant Fleet Supervisor, Edmonton

And on behalf of the Brotherhood:

R. Henham	– Regional Vice President, Vancouver
H. L. Critchley	– Representative, Edmonton
D. R. Nelson	– Grievor

AWARD OF THE ARBITRATOR

The facts of the matter are not in dispute. On May 30, 1978, following his vacation (he had previously been absent by reason of suspension), the grievor reported for work at 07:30 hours. The Assistant Fleet Supervisor would not allow the grievor to return to work until he attended an interview, as he had been advised would be necessary, at the time of his suspension. The Company had later written to the grievor advising him that he should report for such interview on May 29. The grievor, however, did not receive that letter until later on May 30. It is understandable, therefore, that the grievor may have been taken aback at not being allowed to report to work on May 30, although he did know that at some point an interview would be necessary.

When the Assistant Fleet Supervisor advised the grievor that he could not report until he had attended the interview, the grievor threatened the supervisor with bodily harm and made defamatory remarks to him and other Company officers. Later that morning, the grievor spoke by telephone to the District Manager, who was to have interviewed him. When the grievor explained to him that his scheduled vacation had begun during the period for which he had been suspended, and requested vacation pay, the Manager agreed, but advised the grievor that he would then be suspended on other days, so that the total period of time off work would be served. There was nothing improper in that, and the grievor suffered no additional loss thereby. The grievor responded to this by offensive and abusive remarks directed at the District Manager. He requested that the Manager send him a letter outlining the Company's position as to his vacation time and suspension period, and when that was agreed to, he then insisted that it be presented to him within a few minutes. When told that there was no one available to make that delivery, he told the Manager to "get off his ass" and deliver it himself.

That this sort of conduct may be the subject of discipline is not seriously in dispute. The Union contends, however, that the discipline was too severe, and that no proper investigation was carried out.

The transcript of the investigation does not indicate any respect in which the Company was in violation of the collective agreement in its conduct of the matter. The grievor persistently refused to answer straightforward questions on the ground that they did not comply with certain conditions which he had insisted be agreed to. The Company was not obliged to agree to such conditions, which went well beyond any recognized rules of procedure, and the questions themselves were in no way unfair. There is no serious suggestion of any substantial shortcoming in the Company's procedure which the grievor, quite without justification, characterized as that of a "kangaroo court".

There was, I find, just cause for the imposition of discipline on the grievor, and the Company was not in violation of any of the procedural requirements of the collective agreement.

As to the severity of the penalty imposed, I do not consider that the incidents described, standing alone, would call for the assessment of forty demerits and thirty days' suspension. In saying this, I do not rely on the fact that there have been cases where employees have been insubordinate and received relatively minor discipline, such as five or ten demerits, or that there have been cases where they have sworn at supervisors and received no discipline. There may well be cases where such conduct is quite understandable and would not call for discipline, or would call for minor discipline at most. In the instant case, however, the grievors improper conduct was persistent and repeated, and quite clearly amounted to a deliberate attack on managerial authority. At the very least, I would conclude that the assessment of twenty demerits would have been within the range of proper disciplinary responses to this particular situation.

That being the case – that the assessment of at least twenty demerits was justified – any further consideration of the matter is academic, since the grievor was discharged for the accumulation of sixty demerits, in accordance with the established system of discipline. The grievor had, shortly before the incidents in question, been assessed forty demerits and suspended as a result of similar conduct. With the assessment of twenty demerits or more for the incidents here in question, he became subject to discharge in any event. The extreme nature of the grievor's remarks and conduct are such as to justify the final result.

For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR