

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 711

Heard at Montreal, Tuesday, June 12, 1979

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS**

DISPUTE:

Discipline and dismissal of Mr. P. Auger formerly employed as Motorman in Express Division, Montreal.

JOINT STATEMENT OF ISSUE:

The Company discharged Mr. P. Auger on 25 August 1978 for accumulation of seventy (70) demerit marks which resulted from his unauthorized leave of absence on 15 August and for falsification of his work card and failure to serve four (4) clients on 13 August 1978. The Brotherhood contends that the discipline assessed on 15 August 1978 (15 demerit marks) was excessive and severe and the discipline assessed on 13 August (10 demerit marks) was not warranted.

The Company declined the Brotherhood's claims.

FOR THE EMPLOYEE:

(SGD.) J. D. HUNTER

NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) S. T. COOKE

ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company..

G. A. Carra	– Assistant Manager, Personnel, Express Department, Montreal
R. Deshaies	– General Supervisor, Truck Park, Express Department, Montreal
J. G. Major	– Supervisor, Truck Park, Express Department, Montreal
G. Darisse	– Comptroller, Truck Park, Express Department, Montreal
C. L. LaRoche	– System Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

G. Thivierge	– Regional Vice-President, Montreal
P. Auger	– Grievor

AWARD OF THE ARBITRATOR

There are, in effect, two distinct issues raised in this case. I shall deal first with the matter of the unauthorized leave of absence on August 15, 1978, for which the grievor was assessed ten demerits.

The facts of the matter are not in dispute. The grievor did not report for work on August 15 as he ought to have done. He did, as he testified, telephone to the Company at 7:30 a.m. to say that he would not be in. His evidence is that he received no answer at that time. The reason he could not be in was that he had suffered an attack of asthma the night before, had taken certain medication, and as a result found it difficult to stay awake. I am satisfied, from the evidence in this particular case, that that explanation was a correct one.

The grievor ought, of course, to have notified the Company promptly that he would not be in. He did, as noted make some effort, but I do not consider it was really sufficient. Having received no answer when he called at 7:30 he did not wait a short while and call again, as would have been reasonable, but went back to bed, awakening at 10:30. There was then no reason for him not to call in to see if he was still required (even though the regular work would have been dispatched), as he might have been. Again, I consider that the grievor ought to have called in at that time.

From the foregoing, I consider that there was ground for criticism of the grievor in respect of his failure to report. In view of the evidence as to the number of unauthorized and unreported absences which occur at the terminal without discipline, however, and in view of the evidence as to the grievor's own record in that regard, it would seem that to impose any substantial penalty on the grievor on this occasion would be to single him out unfairly. If the penalty imposed is not abolished completely (in terms of demerit points), it should at least be reduced to one of not more than five demerits.

The second matter in issue relates to the grievor's alleged falsification of his work card and failure to serve four clients on August 13, 1978. The allegations may be considered under five different headings: 1) a misstatement as to the number of shipments; 2) a misstatement as to the number of stops; 3) an improper explanation for failure to deliver; 4) a false explanation for a failure to pick up; and 5) insufficient work.

As to (1), the grievor stated on his motorman's report, and reported to his supervisor at the start of the day, that he had 28 shipments, involving 47 parcels. In fact, he had 19 shipments, involving 46 parcels. The divergence as to the number of parcels was explained by the grievor to the Company's satisfaction. The divergence as to the number of shipments can be explained by the grievor's counting each parcel shipped on the Rapidex tariff as constituting a shipment, whereas under that tariff customers may ship three parcels as one shipment. The grievor's evidence was that he had always counted his shipments that way, and that he was not familiar with any special procedures for Rapidex shipments. That in itself is surprising, but it is significant that the grievor himself on the same report, indicated that he had 7 undelivered shipments. In fact, these consisted of 6 one-parcel shipments and one three-parcel Rapidex shipment. The grievor thus seems to have known how to count the Rapidex shipments when it suited his own purpose. It would be to his advantage, of course, to inflate the number of shipments to be made (and thus to dissuade the supervisor from giving him more work) and to deflate the number of undelivered shipments. In my view, the grievor ought to have known of the correct method of counting Rapidex shipments and ought to have used that method throughout. His incorrect calculation would tend to make his own work lighter, and that of his fellow employees heavier, and would tend to delay the accomplishment of the Company's tasks.

As to (2), the grievor reported that he had 22 stops to make on the day in question. In fact, as he admits, he had 16. This was, he says, simply an error. It is, it will be noted, an error in the area of twenty-five per cent. Even more than in the case of the number of shipments, the number of stops is relied on by the supervisor in apportioning work. In understating the amount of work he had to do to this extent, the grievor seriously affected the balance of the work load. It was more than a simple mistake; if not deliberate, it was careless to the extent that discipline could properly be imposed for it.

As to (3), the grievor did not give a correct explanation for his failure to deliver the 7 parcels referred to above. These 7 parcels were to be delivered to 3 customers. As a reason for non-delivery, the grievor simply indicated on his report "closed". It should be noted, however, that the form for the motorman's report provides only a small space for the statement of reasons for non-delivery; further, there is room on individual cards to be filled out for each shipment for an explanation of non-delivery. The grievor's explanation for his failure to make the three deliveries in question was that for one of them (Burroughs), the elevator was out of order; for another (City of Montreal), an incorrect address had been given; and for the third (Central Station) the place to which the delivery was to be made

was in fact closed. The Company adduced certain evidence to the effect that the elevator at Burroughs was not out of order that day. I do not consider that this second-hand evidence, which was not subject to cross-examination, can prevail over that of the grievor, who testified that the elevator was in fact out of order at the time of his attempted delivery, and that it was not unknown for that elevator to be out of order. The mere fact of the grievor's having marked "closed" on his report does not, in the circumstances constitute a serious false statement meriting discipline.

As to (4), a message was transmitted to the grievor at about 3:30 p.m. to pick up a parcel at Place du Canada. At about 4:00 the grievor (whose regular hours of work ended at 5:30, at Lachine), advised his supervisor by telephone that his work was completed. He was then authorized to return to the terminal. In fact, he had not picked up the parcel at Place du Canada. His excuse for not having done so is that he was unable to find room to park there. He had, it seems already made one call there, and he testified that he rarely went back a second time, because of the time it took. The grievor was not very far from Place du Canada when he called the supervisor at 4:00 p.m. I have no doubt that he ought to have advised the supervisor of the fact that the pickup had not been made, so that the supervisor could make the decision whether to send the grievor back to Place du Canada or not. The grievor was, at the least, careless in making this report, even if he was not deliberately trying to mislead. There were grounds for discipline in this respect.

As to (5), this was not a separate allegation against the grievor, but is really a conclusion which may be drawn in the light of the particular charges which have been discussed. The grievor would seem, by his understating of the number of stops he would make, to have arranged to have a little less work that day than others might be expected to have. As has been shown, he was authorized to return to the terminal at 4:00 p.m. The trip from downtown Montreal to Lachine at that hour of the day would, however, be time-consuming, and at the terminal the grievor had certain duties to perform, including the settlement of his account. From all of material before me, I do not consider that the grievor was engaged in any serious attempt to falsify or defraud.

I have indicate my conclusion that the grievor was subject to discipline in respect of his failure to report accurately the state of his pick-ups and deliveries. Not all of the charges against the grievor have been made out, and the penalty assessed against him must be reduced.

The grievor had been subject to discipline on a number of occasions in the past, and at the time of the events in question his record stood at 45 demerits. In my view, the grievor's misconduct in August, 1978 – which I would characterize as negligence or carelessness – was not, taken together with his record, such as to justify discharge. On the other had, reinstatement with full compensation (even with a heavy record of demerit points) would be to give the grievor a windfall he does not deserve. Having regard to all of the circumstances, my award in this matter is as follows: that the grievor be reinstated in employment forthwith, without loss of seniority or other benefits, except that his entitlement to compensation for loss of earnings (regular earnings only) shall be for the period from and after January 1, 1979. On his reinstatement, the grievor shall have a disciplinary record of 55 demerits, dating from January 1, 1979.

(signed) J.F.W. WEATHERILL
ARBITRATOR