

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 712

Heard at Montreal, Tuesday, July 10th, 1979

Concerning

CANADIAN NATIONAL RAILWAYS (TELECOMMUNICATIONS DIVISION)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Refusal by the Company to reduce further, discipline assessed to Mr. K.R. Rieger for unauthorized use of a Company vehicle resulting in an accident.

JOINT STATEMENT OF ISSUE:

On December 3, 1978, Mr. K. R. Rieger, Senior Cable Splicer, CN Telecommunications, Yellowknife, N.W.T., was using a Company vehicle after working hours without authority and was involved in an accident.

Following investigation, he was assessed 30 demerit marks and was advised that he would not be permitted to drive a Company vehicle for an indefinite period of time.

The Brotherhood appealed the discipline as being excessive.

The Company agreed to remove the demerit marks from the record, but refused to remove the driving restriction.

FOR THE EMPLOYEE:
(SGD.) T.B. GOODWIN
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.) A.J. KUHR
PRESIDENT & GENERAL MANAGER

There appeared on behalf of the Company:

R. S. Finegan – Director Industrial Relations, Toronto
D. Edelman – Manager, Employee Relations, Whitehorse

And on behalf of the Brotherhood:

T. B. Goodwin – General Chairman, Edmonton

AWARD OF THE ARBITRATOR

December 3, 1978, was a rest day for the grievor. At the conclusion of work the preceding day, he had driven in a Company vehicle to the home of a fellow employee. He had authority to take the vehicle to his own home, but was not authorized to use it for personal matters apart from going to and from work. His use of the vehicle as he did was therefore unauthorized, and he was subject to some discipline on that account.

The grievor stayed at the home of the fellow employee on December 2 and began drinking. By 1:00 A.M. the next morning he was tired, and realized he was "in no shape to drive". He therefore spent the night at the other employee's home, which was no doubt the wise course. At 6.30 A.M. on December 3 he awoke and decided to go home. He was involved in an accident when his vehicle hit the centre median of the road, obscured by snow. As a result, the vehicle swung to the right and when he straightened it out the right rear of the vehicle slid and hit a parked truck. It does not appear that the grievor was exceeding any speed limit although it may be that he was travelling too fast for the road and weather conditions. It certainly appears that he had some responsibility for the accident. Damage to the Company vehicle was negligible, although substantial damage was due to the parked truck. In my view, this incident too was cause for the imposition of discipline.

The grievor did not remain at the scene of the accident and did not report it. He proceeded to drive another employee, who had been with him, home, and after staying there a while proceeded to his own home. He was later charged by the police with failure to report an accident, convicted, and fined \$100.00. His failure to report the accident to the police was also an employment offence, since a Company vehicle was involved. For this, too, he was subject to discipline.

The issue before me is, as the Joint Statement makes clear, one of the extent of the discipline imposed. When the incident or set of incidents is viewed in isolation, it seems clear to me that while the imposition of a substantial penalty in terms of demerit points was appropriate, the prohibition against driving a Company vehicle was not. That prohibition had as a result the prevention of the grievor's carrying out his duties as a Senior Cable Splicer and it led inevitably to his demotion.

It appears that the grievor is well regarded as far as his actual work is concerned, and there is no question as to his competence as a Cable Splicer. Good cause must be clearly established to show why, as a disciplinary matter, he should be removed from his job where there is no question of his competence to perform it. Such cause may arise, of course, by reason of matters not directly related to an employee's work. If, for example, he had lost his driver's licence as a result of some driving offence quite unrelated to his work and not involving a Company vehicle, the result would indeed be that he would be prevented from carrying out the function of his job. Here however, the Company itself has imposed such a limitation and it must be decided whether or not that was justified.

If the matter stood alone, I do not consider that it would justify a penalty other than the assessment of demerit points. The grievor has, however, been involved in the improper use of Company vehicles on other occasions. In December, 1974, the grievor, who had been instructed to take a Company vehicle to a service station for repairs, first drove a fellow employee home. In the course of that unauthorized trip the vehicle slid off the road, and the grievor damaged the transmission in his attempts to get out. The grievor paid the substantial cost involved in the repair of the transmission. He was not disciplined for the unauthorized use of the vehicle (not, in the particular circumstances, a very serious offence), but he was warned (properly) that future incidents could result in discipline.

In September 1975 the grievor was involved in an accident when he took a Company vehicle without authorization to visit some friends 35 miles away. He engaged in some drinking and had an accident on the return trip. Obviously the grievor was subject to discipline for this. The Company did not impose formal discipline, however, but rather obtained from the grievor an understanding to pay for the substantial damage to the vehicle, and an understanding that he would refrain from the use of Company vehicle for personal reasons. These understandings were given.

In November 1976 the grievor was assessed fifteen demerits for carelessness when he had an accident when backing a Company vehicle out of his driveway. These demerit points, it seems, were removed a year later, the grievor having had a year free of discipline. I do not think that this matter may now be considered as relevant to the issue now before me.

The next matter in which the grievor was involved was the one which gave rise to the present grievance. There is no evidence that the grievor has been involved in accidents or misconduct while driving in the course of his duties, and he must drive a great deal. He does not have a bad driving record as such. Even with respect to this incidental aspect of his duties there is nothing to show incompetence in any sense. The problem arises only with respect to the grievor's unauthorized use of Company vehicles. The natural answer to that sort of problem (apart from the assessment of demerit points) would at first appear to be to prohibit the grievor from any use of a Company vehicle except during working hours. At the time of the offence, however, that might not have been practical, as it seems there were no plug-ins (or an insufficient number) at the yard, and employees were allowed, and perhaps encouraged to take vehicles home to plug them in. In these circumstances, the simple prohibition of after-hours possession of a Company vehicle might not have been practical. The alternative, as a matter of discipline for a continued offence (although it had been some time since the previous occurrence) would, in my view, be a suspension from work.

An indefinite prohibition against driving a Company vehicle seems to me an excessive penalty (considering its very serious long-term implications for the grievor's work and even, in the circumstances of this case for his living conditions) and also an inappropriate one, since it was not any misconduct or bad driving while at work that was a problem, but rather the unauthorized use of Company vehicles. Of course there is a relationship between the grievor's offences and his actual work, but it is an indirect one.

In my view, the assessment of thirty demerit marks (since withdrawn) was proper. A suspension of two weeks would also have been proper, considering that the deprivation of all after-hours use of a Company vehicle might not have been practical. What was, in effect, the demotion of the grievor was not, in my view, a proper disciplinary response to the situation.

In the exercise of my authority to substitute a penalty which appears to me just and equitable, I make the following award bearing in mind that the grievor now works within the scope of another bargaining unit: The grievor is assessed thirty demerits, effective December 19, 1978. He is to be considered as suspended from work for a two-week period, the loss of pay involved to be calculated as that for ten regular working days without affecting any holiday pay received. He may, at his option, return to work as a Senior Cable Splicer subject to any intervening seniority rights) or remain in his present job, such choice to be exercised within two weeks from the issue of this award. He is to be reimbursed for loss of regular earnings for the period from the date when he was removed from the job until the date of issue of this award, less the two weeks' pay above referred to.

(signed) J. F. W. WEATHERILL
ARBITRATOR