

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 733

Heard at Montreal, Tuesday, December 11, 1979

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Discipline assessed R.H. Estell, Trainman at Mirror, Alberta, for unsatisfactory work record and unauthorized leave of absence.

JOINT STATEMENT OF ISSUE:

Effective July 25, 1978 Mr. R.H. Estell, Trainman at Mirror, was assessed 25 demerit marks for unsatisfactory work record during the April – May and the May – June Mileage Checking Periods.

Effective the same date he was assessed a further 25 demerit marks for unauthorized leave of absence commencing June 12, 1978.

The Union has taken the position that the 50 demerit marks are unwarranted and has asked that they be removed.

The Company has declined their request.

FOR THE EMPLOYEE:

(SGD.) L. H. MANCHESTER
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

L. R. Weir	– System Labour Relations Officer, Montreal
K. J. Knox	– System Labour Relations Officer, Montreal
R. J. Clarke	– Senior Labour Relations Assistant, Edmonton
J. F. Maloney	– Trainmaster, Calgary

And on behalf of the Brotherhood:

L. H. Manchester	– General Chairman, Winnipeg
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AWARD OF THE ARBITRATOR

There are two grounds on which discipline was assessed against the grievor. The first relates to his "unsatisfactory work record". The grievor was the subject of an investigation in this respect on July 25, 1978. It was specified that his record was unsatisfactory in respect of the April–May and May–June checking periods. During those periods the grievor was absent for a considerable proportion of the time. His explanation is that he had family problems, and that he took temporary employment in another town on that account. He did not advise the Company that he would be away from work for any extended period of time.

The grievor had, on an earlier occasion, been advised of his responsibility to be available for work, and that outside employment could not be tolerated if it interfered with his work for the Company. Reminded of this the grievor's only answer was that he had not then had family problems.

The second ground of discipline related to the grievor's unauthorized leave of absence beginning June 12, 1978, and for this too the grievor was the subject of an investigation on July 25. It is admitted that the grievor had, following an injury, been cleared by his doctor to return to work on June 11. He did not return until June 18. Again, his explanation was that he had family problems. He subsequently booked off on June 23, and did not book OK until July 15. During that time, he was working for another employer, as he had done on a relatively regular basis for some time.

It is clear that, on both counts, the grievor had not lived up to his obligations to his employer. He had no valid excuse for not reporting for work or at least, if his personal problems really required it, seeking a leave of absence, and explaining the situation – including his intended other employment – to the Company. While substantial demerits could properly be assessed, I do have some hesitation in separating the two heads of discipline, the situation apparently being a continuing one. The case was not argued on this basis, however. Even if it were to be held that only one penalty were to be imposed, and even if it were (although I do not so hold) to be set at twenty-five demerits, since the grievor already had (it appears) at least forty demerits on his record, it is clear that he would be subject to discharge in any event.

Since, as I find, the grievor was liable to the assessment of at least twenty-five demerits (and perhaps more) in the circumstances, and since his accumulated demerits would exceed sixty in any event, there was just cause for his discharge, and the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR