

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 734

Heard at Montreal, Tuesday, December 11, 1979

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Discipline assessed R.C. Anderson, Trainman at Kamloops, B.C., for misuse of pass privileges.

JOINT STATEMENT OF ISSUE:

On February 20, 1978, Mr. R.C. Anderson made application for a trip pass on behalf of himself and wife. The pass was issued on February 22, 1978 and was subsequently utilized for the trip.

Effective November 14, 1978 the Company assessed Mr. Anderson 10 demerit marks for misuse of pass privileges.

The Union contends that such misuse of pass privileges does not justify the assessment of 10 demerit marks. The Company's position is that the discipline was warranted.

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.

H. J. G. Pye, Q.C.	– General Counsel, Montreal
G. E. Morgan	– Director Labour Relations, Montreal
L. R. Weir	– System Labour Relations Officer, Montreal
R. J. Clarke	– Senior Labour Relations Assistant, Edmonton
L. E. Merryfield	– Trainmaster, Kamloops

And on behalf of the Brotherhood.

M. W. Wright, Q.C.	– Counsel, Ottawa
L. H. Manchester	– General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

As is set out in the joint statement, the grievor applied for, received and used a trip pass for himself and wife in February, 1978. Subsequently, on a review of the grievor's file for other purposes, it was remarked that the grievor was not married, and the matter was then investigated.

There is no dispute as to the facts. The grievor is not legally married. He nevertheless applied for, received, and used a pass issued for himself "and wife". The Company contends that there was thus a misuse of pass privileges. The Union contends that there was no misuse, because the lady for whom the pass was issued was the grievors "common-law" wife, and hence his "wife" for the purpose of this case.

The Company's authority for the issue of free or reduced transportation is Section 291(1)(c) of **The Railway Act**, and General Order No. T-27 of the Board of Transport Commissioners. **The Railway Act** permits free carriage

or reduced rates to be given by railways to their own "directors, officers, agents and employees, or their families" and others. General Order No. T-27 likewise permits, *inter alia*, the issue of free transportation to such persons as well as to many other classes of persons. Section 2 of General Order No. T-27 defines "family" in terms of persons being solely dependent on the person eligible to receive passes, although Section 2.1(1) makes it clear that the spouse of a railway employee is to be considered a "dependent member of family", whether or not the spouse is solely dependent on the employee.

While there is no mention in the **Act** or in General Order T-27 of the term "wife", the reference to "spouse" as a member of an employee's "family" seems to me to have the same effect. The question which must be decided, in either case, is whether an employee is entitled to receive free or reduced transportation in respect of a "common law" wife, or "common law" spouse.

In the instant case the grievor received free transportation in respect of a "wife" who was not his "legal" wife or "legal" spouse and thus not a member of his "legal" family, that is, not a member of his family by virtue of having gone through a valid form of marriage with him. Neither **The Railway Act** nor General Order T-27 appears to refer to the requirement of having gone through a valid form of marriage as a condition for the receipt of free or reduced transportation. Nevertheless it is clear that a person who is not a "spouse" in any sense recognized by law is not entitled to free or reduced transportation. See **CROA Case No. 662**.

In the instant case while the grievor had, for some purposes, represented himself as single, he had in fact maintained the lady for whom a pass was obtained for a number of years and had publicly represented her as his spouse. The evidence is that the lady was known to her neighbours as "Mrs. Anderson", and that the grievor was her sole support. It appears that, under certain legislation of British Columbia, where the grievor lives, the lady would be held to be the grievor's spouse, and the same would appear to be the case under the Canadian Pension legislation.

In the circumstances of the instant case, then, the lady in question was considered by the grievor to be his wife, and she was so in a sense recognized by law, having regard to the public nature and duration of the relationship and the dependency involved.

It is my conclusion that in these circumstances the grievor was entitled to have a rail pass issued in favour of himself and his "wife", being the lady in question. There was, I find, no misuse of pass privileges, and no occasion for the imposition of discipline. If I am wrong in this, and if the lady cannot, in these circumstances, be the beneficiary of free transportation (although I hold that she can), then it would be my view that the only discipline appropriate in the circumstances of this particular case would be the issuing of a warning and the requirement of reimbursement of the price of the transportation.

In any event it is my award that the ten demerits be removed from the grievor's record, and that he be made whole in respect of any losses flowing from the assessment of such demerit marks. It would appear that the grievor is entitled to reinstatement in employment without loss of seniority or other benefits, and with compensation for loss of earnings.

(signed) J. F. W. WEATHERILL
ARBITRATOR