

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 888

Heard at Montreal, Tuesday, November 10, 1981

Concerning

### CANADIAN NATIONAL RAILWAYS

and

### BROTHERHOOD OF LOCOMOTIVE ENGINEERS

#### **DISPUTE:**

Discipline assessed S.J. Balogh, Locomotive Engineer at London, Ontario for failure to protect assignments between May 26 and June 11, 1980.

#### **JOINT STATEMENT OF ISSUE:**

Effective June 13, 1980, Mr. S.J. Balogh, Locomotive Engineer at London, Ontario was assessed 20 demerit marks for failure to protect assignments between May 26 and June 11, 1980 and consequently dismissed for accumulation of demerit marks.

The Brotherhood has taken the position that the 20 demerit marks are unwarranted and has asked that they be removed.

The Company has declined their request.

#### **FOR THE EMPLOYEES:**

**(SGD.) P. M. MANDZIAK**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) G. E. MORGAN**  
DIRECTOR LABOUR, RELATIONS

There appeared on behalf of the Company:

R. Birch	– Manager, Labour Relations, Montreal
M. Delgreco	– Regional Labour Relations Officer, Toronto
P. L. Ross	– Coordinator Transportation - Special Projects, Montreal
D. D. Davidson	- Assistant Superintendent, London

And on behalf of the Brotherhood:

P. M. Mandziak	– General Chairman, Toronto
C. R. Downey	– First Vice-General Chairman, Toronto.
S. J. Balogh	– Grievor

## **AWARD OF THE ARBITRATOR**

The grievor booked leave at 1200 on May 26. He did not thereby obtain the right to be absent indefinitely. In fact, on the evening of May 28 he called the Assistant Superintendent at home to explain his situation, which involved personal financial difficulties. In his statement, the grievor acknowledged that he had no reason for waiting two days to advise the Assistant Superintendent. In any event the Assistant Superintendent suggested that the grievor take the balance of the week off. That would include the period up to Friday, May 30, so that the grievor would be available for his assignment on June 2. The grievor did not report at that time.

The Company then attempted to contact the grievor, and left a message – which the grievor acknowledged receiving – to the effect that he was absent without leave, and that he should call and book on for work. This did not amount to a termination of leave without notice (which I agree would have been unfair). Rather, the grievor's period of leave – known to him – had expired. The grievor did not report to work, did not respond to messages which he received, and did not attempt to contact the Assistant Superintendent as he had previously done.

A registered letter was sent to the grievor, outlining the situation and requiring him to report. On June 5 the grievor had a meeting with Company Officers at which the situation was fully explained to him. He was reminded that allowing other employment to interfere with his work for the Company was considered a dismissable offence, and he was reminded as well that his disciplinary record then stood at 55 demerits, so that his situation was precarious in any event. At that meeting, the grievor indicated that he expected to have resolved his immediate financial difficulties by Monday, June 9. He was told that he would then be expected to return to work, and that he was to call the Assistant Superintendent by 1000 on Tuesday, June 10. The grievor was considering resigning from the Company in order to devote himself to other work, and it was understood that he would advise the Assistant Superintendent of his intentions at that time. On June 10 the grievor telephoned the Assistant Superintendent at 1330 (the starting time of his assignment was 1530) and requested further time off in order to deal with his affairs, which had not yet been resolved. The Assistant Superintendent told the grievor that he did not have permission to book off, and that he was to decide that day whether he would return to work or resign. The grievor said that he would call later that day with his decision.

If, in fact, the grievor had called that day to advise that he wished to remain with the Company, and if he had reported for work the following day, it would be my view that the Company could not then have taken disciplinary action in respect of these absences, about which it had been very accommodating. The grievor did not telephone the Assistant Superintendent, nor did he report for work or contact the Company on June 11. He did report on June 12: it was then too late, however, and the grievor was instructed to report for the investigation which led to the assessment of demerits.

There can be no doubt that the grievor was absent without leave. There can be no doubt, either, that he was given consideration and time off, and later given clear warning that his situation was precarious. It was open to the Company to take disciplinary action when the grievor thereafter was absent without leave. In view of the grievor's record which includes several similar offences, it would be my view that the assessment of twenty demerits was not excessive, but in any event the grievor's record of accumulated demerits was such that even a small number of demerits would have subjected him to discharge.

There was, as I find, just cause, in all of the circumstances for the imposition of the penalty in question. Accordingly, the grievance must be dismissed.

**(signed) J. F. W. WEATHERILL**  
ARBITRATOR