

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 905

Heard at Montreal, Tuesday, February 9, 1982

Concerning

CANADIAN NATIONAL RAILWAYS

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of the discipline assessed Yardman K.P. Schaar of Edmonton, Alberta for fraudulently booking sick on June 10, 1981, when called to fill position of Yard Helper.

JOINT STATEMENT OF ISSUE:

On June 10, 1981, Yardman K.P. Schaar, who was assigned to the Yardmen's Spareboard at Edmonton, was called as a Yard Helper for the 1500 East Tower #1 Assignment in Calder Yard. Yardman Schaar booked sick on call.

Following an investigation of the incident, Yardman Schaar's record was assessed with 20 demerit marks for fraudulently booking sick on June 10, 1981, when called to fill position of Yard Helper.

The Union appealed the discipline assessed on the basis that it was unwarranted.

The Company declined the appeal.

FOR THE EMPLOYEE:

(SGD.) L. H. MANCHESTER
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

J. A. Fellows – Manager, Labour Relations, Montreal
P. L. Ross – Coordinator Transportation – Special Projects, Montreal
K. L. Burton – Labour Relations Assistant, Montreal

And on behalf of the Employee:

L. H. Manchester – General Chairman, Winnipeg
R. T. O'Brien – Vice-President, Ottawa
R. J. Proulx – General Chairman, Montreal

AWARD OF THE ARBITRATOR

The grievor is a highly-qualified employee, capable of filling many positions, and entitled, whether on a first-in first-out basis, or on a basis of seniority, to be called for different classes of work.

On the occasion in question the grievor was called at 1300 for a 1500 yard assignment, as a Yard Helper. He booked sick on the call. It is clear that the grievor was not sick (he effectively admits as much in his statement), as he called back at 1305 to book OK for duty and request a position for another shift. It would appear that by this manoeuvre the grievor may have obtained a better job for himself, and in so doing shuffled off a less desirable one to some other employee. Such conduct is clearly wrong from a number of points of view, and it is not condoned by the Union. Regardless of one's other qualifications and hopes for better work, when one is on the spareboard for yard work, one must take what is offered, along with all others.

Clearly, the grievor was subject to discipline in this case. In **Case No. 296** a penalty of 35 demerits was upheld, although it should be said that the extent of the penalty appears not to have been in issue. A penalty of 20 demerits might well be proper, but I make no finding on that, since even a penalty of 10 demerits would have subjected the grievor to dismissal. The grievor contends that he was making a "test" of the Company's practice in such cases, but it must be said that it was extremely foolhardy of an employee with 50 demerits to engage in that sort of experiment.

The only serious argument in the grievor's favour is that the rules in respect of accepting calls, or booking sick and then re-booking in order to accept better work have been unevenly and unfairly applied, and that the grievor has been improperly discriminated against in this respect. The Company's position is that this is irrelevant: it is not. Such considerations do not go to whether or not an offence was committed, but they are very pertinent to the matter of the penalty imposed. In this case, a number of incidents in which other employees are alleged to have pulled the same trick as the grievor with impunity. To single out the grievor for a severe penalty is unfair. The incidents referred to were not refuted by the Company.

Were it not for the matter of the discriminatory application of discipline, I would dismiss this grievance. In view of what appears to be the uneven and discriminatory application of this power, however, I find that while there was certainly cause for discipline, the penalty should be reduced to one of 5 demerits. This results in the reinstatement of the grievor in employment. Having regard to all of the circumstances, however, I do not consider that any award of compensation should be made. The grievor should be reinstated in employment forthwith, without loss of seniority.

(signed) J. F. W. WEATHERILL
ARBITRATOR