

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 911

Heard at Montreal, Montreal, Wednesday, February 10, 1982

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

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

### EX PARTE

#### **DISPUTE:**

This concerns discipline assessed Mr. G. J. Burke, Rate Clerk, St. John's, Newfoundland.

#### **BROTHERHOOD STATEMENT OF ISSUE:**

Mr. G. J. Burke was given demerit marks and period of suspension as discipline for being absent from work.

It is the Union's contention that the discipline assessed is excessive and Mr. Burke was disciplined twice.

The Company declined to reduce the discipline.

#### **FOR THE BROTHERHOOD:**

#### **(SGD.) M. J. WALSH**

**GENERAL CHAIRMAN**

There appeared on behalf of the Company:

W. R. Brisbane           – Manager, Labour Relations, Montreal  
W. A. McLeish           – System Labour Relations Officer, Montreal  
B. Everard               – Employee Relations Officer, TerraTransport, St. John's

And on behalf of the Brotherhood:

M. J. Walsh             – General Chairman, St. John's  
W. Greenland           – Local Chairman, St. John's  
H. Stryde               – Local Chairman, Lewisport

## **AWARD OF THE ARBITRATOR**

The grievor was in fact absent from work without authorization from February 16 until February 23. There is no doubt that he was subject to discipline on that account. In the light of the grievor's record of attendance, a substantial penalty – and I consider 20 demerits to be substantial – was appropriate. There was, I find, just cause for the imposition of that penalty.

The investigation of the grievor's misconduct was held on March 2, 1981, having been delayed one week at the request of the grievor. A decision as to discipline, however, was not made until March 23, when the 20 demerits were assessed. At the same time, a penalty of "time out of service to count as suspension" was also assessed. This is, again, a substantial penalty, and would involve a considerable financial loss.

In my view, there are two questions to be answered with respect to the discipline imposed in this case. First, was the total penalty of demerits plus suspension (it should be described as a "complex" rather than a "double" penalty), justified? Second (and this is a quite distinct matter), was the suspension proper in the light of Article 8.2 of the Collective Agreement?

As to the first question, while I have indicated that 20 demerits was appropriate, it is my view that a penalty of 20 demerits plus a 3-week suspension was, in total, an excessive one. On this ground alone, I would set aside the suspension portion of the penalty.

As to the second question, while the matter was not argued, the provisions of Article 8.2 appear to be clear. An employee is not to be held out of service pending the rendering of a decision, except in the case of a dismissible offence. In this case the grievor was held out of service following his investigation and pending the rendering of a decision. At the time his record stood at 10 demerits. I do not think that this could be considered a case of a "dismissible offence". While Article 8.2 does not rule out suspensions as a form of discipline, it does prohibit the action which was taken in this particular case. On this ground as well, then, I would rule that holding the grievor out of service, and counting such time as suspension, was not justified.

For the foregoing reasons it is my award that the penalty assessed against the grievor be 20 demerits, that period of suspension be removed from his record, and that he be compensated for loss of earnings in respect of the period from March 3 to March 23, 1981.

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