

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1182

Heard at Montreal, Tuesday, February 14, 1984

Concerning

ONTARIO NORTHLAND RAILWAY

and

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

### DISPUTE:

Discipline assessed Installer M. Banning.

### JOINT STATEMENT OF ISSUE:

On March 31, 1983, Installer M. Banning was assessed discipline as follows: 15 demerit marks for removing an in-service base station: 15 demerit marks for failing to protect assignment March 11, 1983, and 20 demerit marks for refusing to protect assignment after repeated requests by supervisor, March 12, 1983.

The Union appealed, requesting a reduction of the discipline for the first item and cancellation of the discipline for the other two items.

The Company denied the appeal.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) S. C. RUTTAN (SGD.) P. A. DYMENT

General Chairman General Manager

There appeared on behalf of the Company:

A. Rotondo – Manager Labour Relations, North Bay

D. J. Borden – Manager Operations, Telecommunications, North Bay

And on behalf of the Brotherhood:

S. C. Ruttan – General Chairman, Porquis, Ontario

P. Gosselin – Local Chairman, New Liskeard, Ontario

### AWARD OF THE ARBITRATOR

The grievor, Mr. M. Banning, is employed as a Communication Installer with the Company. The Company has a contract with the Ministry of Transportation and Communications (Ont.) to provide and maintain a Radio Communications Service linking several base stations in Northern Ontario. Fraserdale is one of the base stations serviced by the Company. The communication service provided by the Company is vital for police and other highway operations in the area.

In 1981 the Employer replaced the General Electric unit of these base stations in the Northern Region with a Motorola Unit. The old GE Unit at Fraserdale was removed in accordance with the specifications of the contract in July 1981. In March, 1983, there still remained some inconsequential work to be done in order to complete the removal of that GE Unit.

Mr. Banning, an experienced installer with several years service with the Company, undertook the task of installing and removing both of the radio communications units in March, 1983. He was instructed by his foreman, Mr. R. Garlock, to finish the task of removing the GE unit. He was assisted in this project by Mr. Gaudreault, a maintainer. It is common ground that on March 7, 1983, both Mr. Banning and Mr. Gaudreault misread the specifications for completing the task and wrongly removed the Motorola unit. As a result the area served by the Fraserdale Station was without radio communication service.

The error was not communicated to Mr. Garlock until March 11, 1983. At that time he immediately contacted Mr. Banning and advised him of the arrangements he had made for his return to Fraserdale to correct the mistake. The following day, when Mr. Garlock learned that the grievor had not done as was expected of him, he ordered him to return as aforesaid, to complete the project and correct his mistake. The grievor did not do as he was directed. As a result the Fraserdale station was inoperative for several days.

The grievor's explanation for his failure to comply with his foreman's direction was attributable "to his not feeling well". Apparently, the grievor suffers from hypertension and high blood pressure. A doctor's certificate was adduced to substantiate his sickness. The evidence also shows that the grievor was absent from work under his doctor's care for the period between March 14, 1983 and May 11, 1983. Moreover, on his return to his residence on March 7, 1983 he had advised Mr. Garlock of his not feeling well. Mr. Garlock allowed the grievor to stay over that evening in order that he rest and compose himself.

The grievor insists that the reason he did not attend the Fraserdale sub-station as directed by Mr. Garlock was because he was not feeling well. Moreover, he stated that he advised Mr. Garlock of his medical condition on both March 11 and March 12, 1983, when he was contacted. Mr. Garlock, on the other hand, insists that no such complaint was ever made. Had that been the case Mr. Garlock suggested that he would have arranged for another installer to have attended the problem at Fraserdale.

Mr. Banning, as the Joint Statement of Issue indicates was assessed a total of 50 demerit marks arising out of the error he committed and his alleged insubordination in not attending to as directed correction of that error. Incidentally, Mr. Gaudreault, the Maintainer, not assessed any demerit marks for his negligence in failing to follow the specifications.

In this case the parties are agreed that an error was committed by Mr. Banning in removing the Motorola Unit. Although that error, in light of Mr. Banning's experience, may appear inexcusable, I am satisfied that Mr. Gaudreault must share some of the blame. Mr. Gaudreault had access to the same specifications and was not assessed any discipline for his negligence. Because I recognize that Mr. Banning was the installer in charge of completing the project (I am somewhat satisfied that he should share a larger portion of the responsibility for the mistake. In the last analysis, however, Mr. Gaudreault should not have escaped the episode untainted where for a like infraction Mr. Banning incurred fifteen demerit points. Accordingly, on the principle that fairness and evenhandedness should be exhibited by the Employer in meting out discipline to its employees for the committal of like infractions (to the extent of their blameworthiness) I am satisfied that the fifteen demerit points imposed on the grievor for wrongly removing the Motorola Unit at Fraserdale should be reduced to five.

Moreover, although "the obey now grieve later" principle applies to most situations involving an employee's reluctance to follow his supervisor's orders, there do exist several exceptions to that rule. One of these exceptions is obviously where the employee is incapacitated due to illness from carrying out the Employer's direction. I am satisfied, based on the material before me, that the grievor honestly was not feeling well when contacted by Mr. Garlock. His incapacitation after the incident for approximately two months is ample proof of the extent of his sickness. I am, therefore, prepared to give the grievor the benefit of the doubt and find that he was not insubordinate in refusing for legitimate cause to attend the Fraserdale station to correct the error that was committed.

The one feature of this case that seems to explain the difficulty that subsequently arose was the grievor's failure to clearly communicate his illness to Mr. Garlock at the time he was contacted. He merely stated that "he was not feeling well". That, in itself, may not have brought home the urgency of his condition so as to induce Mr. Garlock to find a substitute. Nonetheless, based on the evidence before me I am satisfied that just cause for the imposition of thirty-five demerit points has not been established for the grievor's alleged insubordination.

The grievor's disciplinary record will show 5 demerit marks for the one infraction. In all other respects the grievance is sustained.

**(signed) DAVID H. KATES**

**ARBITRATOR**