

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1220

Heard at Montreal, Thursday, March 8, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS**

DISPUTE:

Appeal of discipline assessed J. C. Sales, Motorman, Lachine Terminal, Lachine, Quebec effective 29 March 1983.

JOINT STATEMENT OF ISSUE:

The Company assessed twenty demerit marks against the record of Mr. J. C. Sales for having an unauthorized passenger in his Company vehicle and for having left his assigned territory without permission on 23 March 1983. The Brotherhood contends the disciplinary measure was unwarranted and requests the twenty demerit marks be removed.

The Company declined the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

W. W. Wilson	– Manager Labour Relations, Montreal
S. A. MacDougald	– System Labour Relations Officer, Montreal
D. Lord	– System Labour Relations Officer, Montreal
K. A. Pride	– Manager Human Resources, CNX/CN Trucking, Toronto
P. Tremblay	– Zone Supervisor, CNX/CN Trucking, Lachine

And on behalf of the Brotherhood:

G. Thivierge	– Regional Vice-President, Montreal
J. A. Callaghan	– Representative, Montreal
M. Moreau	– Local Chairman, Montreal

AWARD OF THE ARBITRATOR

The issue as to whether the grievor had an unauthorized passenger in a Company vehicle on the afternoon of March 23, 1983, in contravention of Rule No. 131 turns on the credibility of the two participants to the episode. Rule No. 131 reads as follows:

Carrying unauthorized passengers is contrary to Company rules and is prohibited. Drivers violating this rule are subject to immediate dismissal.

There is no dispute that the grievor left his assigned territory without permission. Zone Supervisor, Paul Tremblay, at approximately 1405 hours noticed the grievor's vehicle at the intersection of St. Laurent Blvd., and Jarry Street. Mr. Tremblay followed the grievor for several blocks and observed a passenger in the cab of his vehicle.

At Duluth Street and St. Laurent Blvd., Mr. Tremblay saw a male passenger get out of the vehicle. At 1415 hours, Mr. Tremblay stopped Mr. Sales at St. Laurent Blvd., just north of Rachel Street. At this point the grievor was nine blocks outside his assigned territory.

When confronted with Mr. Tremblay's observations that a passenger had been in his vehicle, the grievor admitted it to be his boy whom he had dropped off. Arising out of this episode the grievor was given notice of an investigation with respect to his alleged improper conduct.

During the course of the investigation the grievor stated that because he had forgotten his wallet with his driver's license inside he arranged to meet his nephew at the corner of Rachel and St. Laurent Blvd. to retrieve it. He later changed his story to indicate that he met his nephew for the same purpose at Duluth and St. Laurent Blvd. He denied ever telling Mr. Tremblay that he had a passenger, namely his boy, inside the vehicle.

When faced with diametrically opposite recitation of events an Arbitrator, particularly under the present system of procedure, can only choose between the version that best accords with logic and consistency. In this regard, the Company has discerned a very logical motive in why the grievor would elect to reverse his admission made to Mr. Tremblay at the time he was first confronted. In the interim period he must have discovered that any infraction of the rule with respect to carrying unauthorized passengers in his vehicle might result in his dismissal. Accordingly it is an inescapable inference to make that the grievor fabricated a story about his forgotten wallet in order to avoid the consequences that might result. Moreover, his confusion about the street corners at which the alleged exchange took place with his nephew merely exacerbated the grievor's untruthfulness. In the last analysis, the first hand observations of Mr. Tremblay of the grievor's activities culminating in the admission that was originally made must be preferred to the grievor's alleged excuse.

For the foregoing reasons, I am satisfied that the grievor violated the relevant rules prohibiting an unauthorized passenger on a Company vehicle and for having left his assigned territory without permission. The assessment of twenty demerit marks was therefore warranted.

The grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR