

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1249

Heard at Montreal, Wednesday, June 13, 1984

Concerning

### ONTARIO NORTHLAND RAILWAY

and

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

#### **DISPUTE:**

Discipline assessed spareboard employee C. Cook.

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

Spareboard employee C. Cook was assessed five demerit marks for "refusing duty, Train 121, November 9, 1983, 1620 hours at North Bay".

The Brotherhood contends that Ms. Cook was unjustly disciplined and requests the removal of the five demerit marks from her file.

The Company does not agree.

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

**(SGD.) T. N. STOL**  
REPRESENTATIVE

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

**(SGD.) P. A. DYMENT**  
GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo                   – Manager Labour Relations, North Bay  
J. H. Singleton               – Manager Passenger Services, North Bay

And on behalf of the Brotherhood:

T. N. Stol                     – Representative, Toronto

## **AWARD OF THE ARBITRATOR**

The issue herein is whether the assessed discipline of 5 demerit marks, in addition to barring the grievor from duty, without compensation, for the duration of the run which she failed to accept, was for "just cause". Article 7.1 of the collective agreement reads as follows:

A spare list shall be maintained consisting of the names of the number of senior unassigned employees required to protect stand-by and extra road service. The number of names on the spare list shall be regulated in accordance with traffic conditions in an endeavour to provide as closely as possible 160 hours per 4-week period to each employee. Such employee shall be called to perform stand-by or road service on the 'first in, first out' principle. An employee failing, without showing just cause to the Supervisor, to accept a run in his turn, shall be debarred from duty, without compensation, for the duration of the run which he failed to accept. When he is restored to duty his name shall be shown at the bottom of the spare list.

The facts are not in dispute. Ms. Cook was not available for a call off the spareboard to perform hostess duties on Train 121, November 9, 1983 at North Bay. Because Ms. Cook was pregnant the one uniform she was required to wear during the course of performing her duties was at the cleaners. This uniform was purchased at her own expense. Apparently, the Employer is required to both supply and to clean uniforms provided to its employees at Company expense pursuant to article 15 of the collective agreement. It is common ground that the Employer did not supply the grievor with a uniform that could accommodate her pregnant condition until after the facts giving rise to this grievance arose.

The Trade Union has challenged the justness of the Company's conclusion that the grievor engaged in misconduct in failing to respond to a call off the spareboard. Moreover, it has challenged the propriety of the Company's decision to impose the "double" penalty for her infraction as described in the initial paragraph of this decision.

It is my view that the first ground in challenging the Company's action ought to succeed in the particular circumstances of this case. I am satisfied that the grievor did not refuse to report for duty in response to her supervisor's call. In the grievor's view she had a legitimate excuse for not reporting. She did not have the proper attire needed to carry out the duties of the position and this was clearly communicated to her superior. Because the Employer is obliged under the collective agreement to supply its employees with an appropriate uniform, the grievor was rightfully entitled to a uniform that accommodated her pregnant condition. Or, without such an appropriate uniform, the grievor had "just cause" for refusing the Employer's call.

Accordingly, I am satisfied that the 5 demerit marks should be removed from Ms. Cook's personal file.

**(signed) DAVID H. KATES**  
**ARBITRATOR**