

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1251

Heard at Montreal, Wednesday, June 13, 1984

Concerning

CN MARINE INC.

and

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

DISPUTE:

Discipline assessed Mr. Gerard Sexton, an Engineroom Storeman on the M.V. "John Hamilton Gray", for leaving his place of work on 4 January 1984 without permission and contrary to specific directions from the Sr. Chief Engineer.

JOINT STATEMENT OF ISSUE:

The Union contends that the discipline was not warranted, maintaining that article 25 of the collective agreement conveys to Mr. Sexton, in his capacity as Local Chairman, the right to leave upon request.

The Company maintains that the discipline was justified and appropriate in the circumstances.

FOR THE BROTHERHOOD:

(SGD.) W. C. VANCE
REGIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) G. J. JAMES
DIRECTOR INDUSTRIAL RELATIONS

There appeared on behalf of the Company:

N. B. Price	– Manager Labour Relations, Moncton
L. H. Wilson	– Labour Relations Assistant, Moncton
Capt. D. G. Graham	– Marine Superintendent, Borden
B. W. MacDonald	– Senior Chief Engineer, M.V. "John Hamilton Gray", Borden

And on behalf of the Brotherhood:

G. T. Murray	– Representative, Moncton
T. McGrath	– National Vice-President, Ottawa
G. Sexton	– Grievor

AWARD OF THE ARBITRATOR

The grievor was assessed twenty demerit marks and a two day suspension for his alleged insubordination for leaving his place of employment without permission from the Senior Chief Engineer. There is no dispute that Mr. Sexton left the premises without the permission of his superior and was advised that severe consequences might follow from his refusal to obey his order not to leave.

At all material times the grievor was employed as a Storeman on the M.V. "John Hamilton Gray" and in that capacity lent assistance in the maintenance of the vessel. Mr. Sexton is also Local Chairman of the Trade Union whose responsibility included the investigation and processing of grievances on behalf of members of the bargaining unit. Moreover, his other duties as Local Chairman entailed the processing of claims before the Workman's compensation Board, the Unemployment Insurance Commission and the Pension Board. The grievor, owing to the size of the bargaining unit (350 employees) is very much involved in discharging his Trade Union responsibilities.

The Trade Union's defence to the allegation of insubordination rests on the application of article 25 of the collective agreement. On January 24, 1984, the grievor gave his Supervisor approximately 70 minutes notice of his intention to leave the work premises to attend to Trade Union activity. His request was denied owing to the short notice that was extended the Senior Chief Engineer and the disruption to the work place that followed. Notwithstanding the warning of the severe discipline that might follow should he leave the premises the grievor proceeded to attend to his Trade Union business. The relevant provisions of article 25 that apply to the grievor's situation is as follows:

25.1 Employees elected as salaried representatives of the employees shall, upon request, be granted leave of absence without pay while so engaged.

25.3 Employees elected or appointed to serve on committees for investigation, consideration and adjustment of grievances shall, upon request, be granted free transportation in accordance with pass regulations and necessary leave of absence without pay.

25.4 Employees shall, upon request, be granted free transportation in accordance with pass regulations and leave of absence without pay to attend Brotherhood meetings. Such leave of absence will be granted only when it will not interfere with the Company's business nor put the Company to additional expense.

The Trade Union's position is simply that article 25.3 of the collective agreement confers upon the Local Chairman designated to handle grievances *carte blanche* authority to leave the work premises. The use of the word "shall" in article 25.3 imposes a mandatory obligation upon the Employer to grant such leave when requested.

Apart from my concern as to whether Mr. Sexton was actually engaged in processing grievances during the time leave was requested, I am not satisfied that article 25.3 amounts to an "automatic" entitlement to quit the work premises. If that were the case there would be absolutely no necessity to require Mr. Sexton to secure the Employer's permission at all.

It is my opinion that the Employer cannot deny leave to a Trade Union officer to attend to the business of processing grievances save and except for legitimate reason. The grievor, as a condition for securing the Employer's permission, must at least provide, in addition to his reasons for the leave request an explanation for the short notice. If the requirement for permission arose in a situation that could properly be described as an "emergency" then the Employer might still be able to accommodate the grievor so as to enable him to attend to his Trade Union business at a mutually satisfactory time. For example, if a time limit problem has created the "emergency" situation that required the grievor's immediate attention then that concern may be alleviated by the Employer's extension of the time limit for processing the grievance.

In short, the issue herein is not whether the Company has "intruded" upon an entitled right of a Trade Union officer to attend to legitimate Trade Union business. Rather, the issue is whether both the Trade Union's needs and the Employer's requirement in carrying out its business without disruption can be accommodated. If not, then the Trade Union officer may very well be entitled to permission to leave the work premises irrespective of the Employer's opposition. But to suggest that such permission is to be viewed as "automatic" and would not entail the simple courtesy of advance notice of an intention to take such leave, where possible, is not an interpretation of the collective agreement that can be supported.

To be perfectly clear, the rather stringent requirements imposed upon the Employer under article 25.3 to grant leave is confined to "the investigation, consideration and adjustment of grievances". Such other matters relevant to Mr. Sexton's responsibilities as a Trade Union officer are governed by the less stringent requirements of article 25.4 where such leave will be granted "only when it will not interfere with the Company's business".

As pointed out at the hearing, I am not of the view that attending to the claims of the Company's employees before the Workmen's Compensation Board or the Pension Board is a "grievance" to which the leave provisions of article 25.3 is pertinent. Accordingly I am dubious of the legitimacy of the grievor's defence on those grounds alone.

Quite frankly, it is my candid opinion that the grievor's loyalty was torn between his duty to the Employer and his obligation as a Trade Union officer. Rather than having engaged in an act of insubordination the grievor misconstrued the nature of his obligations to both masters. In light of my elaboration of the nature of his responsibilities to his Employer in requesting permission to attend to Trade Union business it is anticipated that such incidents as described herein will not be repeated.

Accordingly, it is my view that the Employer's decision to impose 20 demerit marks should be replaced by a written reprimand. Moreover, the two days that the grievor was kept out of service should be sustained but no record of that penalty should remain on his personal record. I shall remain seized of the implementation of this award.

(signed) DAVID H. KATES
ARBITRATOR