

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1263

Heard at Montreal, Tuesday, July 10, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of 30 demerit marks assessed the record of Brakeman G.G. Tersigni of Toronto, Ontario and subsequent discharge due to accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

On May 27, 1983, Mr. G.G. Tersigni was assigned as Brakeman on VIA Passenger Train No. 656 which departed Union Station, Toronto at 2017 hours, enroute to Kingston, without a clearance or train orders.

After travelling approximately 13 miles and upon approaching Guildwood Station, the train crew realized what had occurred and reported the incident.

Following an investigation, the record of Brakeman G.G. Tersigni was assessed 30 demerit marks, effective May 27, 1983, for violation of Rules 83D, 210B, 210C, 211 Paragraph 4 and 106 of the Uniform Code of Operating Rules.

As a result, Mr. Tersigni was discharged effective July 12, 1983, for accumulation of demerit marks.

The Union appealed the assessment of 30 demerit marks, and the resultant discharge, on the grounds that it was too severe and discharge was not justified.

The Company declined the Union's appeal.

FOR THE UNION:

(SGD.) R. A. BENNETT

GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) M. DELGRECO

FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

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| J. B. Bart | – Labour Relations Officer, Montreal |
| D. W. Coughlin | – Manager Labour Relations, Montreal |
| J. A. Sebesta | – Coordinator Transportation - Special Projects, Montreal |
| J. G. Sills | – Coordinator Rules and Training, Montreal |

And on behalf of the Union:

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| T. G. Hodges | – Vice-General Chairman, Toronto |
| M. Hone | – National Research Director, Ottawa |
| G. G. Tersigni | – Grievor |

AWARD OF THE ARBITRATOR

The facts precipitating the grievor's discharge are not in dispute. On May 27, 1983, Mr. G.G. Tersigni was assigned as brakeman on VIA Passenger Train No. 656 which departed Union Station enroute to Kingston, Ontario without a clearance or train orders. As such, the grievor along with the two other members of the crew were assessed demerit marks for their admitted breach of UCOR Rules 83D, 210B, 210C, 211 paragraph 4 and 106. It is not necessary to detail the facts that precipitated the culminating incident that resulted in the grievor's assessment of thirty demerit marks for his failure to ensure that the clearance and train orders were secured prior to the train's departure from Union Station. Nor is it necessary to stress the seriousness of the breach with respect to the safety and security of the public and, more particularly the passengers using the train.

The sole issue that was argued by the parties was whether the resultant discharge of the grievor on July 12, 1983 was warranted as a result of the thirty demerit marks assessed for this incident and his past record showing an accumulation of forty-five demerit marks flowing from two incidents involving the breach of the UCOR Rules that occurred on September 15, 1982.

The grievor has served the Company in an competent manner for approximately ten of his eleven years service with the Employer. The evidence demonstrated that several incidents occurred between August 19, 1982 and April 17, 1983 that adversely affected his personal life. I do not feel it is appropriate to detail these incidents in this decision for the obvious reasons that are to follow. It is clear that these incidents closely paralleled the work related infractions that were attributed to the grievor's inattentiveness in the performance of his duties and responsibilities. And, in fairness to the Employer, there is no reason, owing to the grievor's reticence, why Mr. Tersigni's supervisors would know of the pressures exerted upon him that were occasioned by his personal misfortunes. It suffices to say, notwithstanding the dubious relevance of the medical certificates adduced, that the grievor's aberrant work performance coincided with the events that were described in evidence and no other explanation was advanced as to why his once exemplary work performance would deteriorate.

The principal question that must be addressed is whether the occurrence of two incidents within a period of nine months involving serious breaches of the UCOR Rules should warrant the discharge of an otherwise exemplary employee with eleven years service. Or, more precisely, in applying "the Brown System" for the imposition of discipline has the Employer shown that the grievor's discharge was an appropriate response to the culminating incident?

Notwithstanding the Employer's foremost concern for the safety and security of the travelling public it serves, I have concluded that it has adopted, in the grievor's cases, too strict an adherence to the "Brown System". It must be borne in mind that the Brown System represents a method for the imposition of "progressive discipline". The objective is to ensure that employees are treated fairly and in an evenhanded manner in the light of all the relevant circumstances.

In light of the situation described and in weighing the Employer's interests for a safe and secure train service and the grievor's interests with respect to his job security I have concluded that recourse to the discharge penalty has tipped the balance too heavily in the Employer's favour. Firstly, I am satisfied that the grievor's reinstatement without compensation as of the date of the receipt of this decision is tantamount to a reasonable penalty in the circumstances. A suspension of a year's duration should suffice to impress upon the grievor and his colleagues the seriousness of the infraction that was committed. In other words, the deterrent aspect of the Employer's concerns should be met by the imposition of a lengthy suspension.

On the other hand, the grievor's long-standing exemplary employment with the Company prior to the occurrence of both the culminating incident and the incidents of September 15, 1982, is an obvious factor that does not appear to have been given appropriate consideration by the Employer in the imposition of the discharge penalty. Although I find the grievor was remiss in not disclosing his personal difficulties to his Employer at a time that would have enabled the Employer to offer a remedy through its EAP programme and thereby avoid the infractions of the rules, those difficulties, in the absence of any other reason, explain his deteriorating work performance. These difficulties clearly do not excuse his inattentiveness to the UCOR Rules in the discharge of his work duties. Nonetheless, such awareness on the Employer's part, given that the problems have been somewhat overcome, would justify the grievor's vindication as an employee who might still make a meaningful contribution. Or, more succinctly, I am satisfied that the grievor's aberration in the performance of his duties reflects no permanent shortcoming that ought to preclude giving him a last change.

For all the foregoing reasons, the Employer's decision to assess the grievor with 30 demerit marks is to be removed from his personal record. In its stead a suspension effective the date of his original discharge to the date this decision is received is to be imposed. At that time the grievor is to be reinstated without compensation or other benefits. I shall remain seized of all outstanding issues in the event of difficulty in the implementation of this decision.

(signed) DAVID H. KATES
ARBITRATOR