

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1313

Heard in Montreal, Wednesday, December 12, 1984

Concerning

CANADIAN NATIONAL RAILWAYS

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed the record of Trainman D.J. Kring of Hornepayne, Ontario, effective February 19, 1984.

JOINT STATEMENT OF ISSUE:

Mr. D.J. Kring was assigned to the joint spareboard at Hornepayne. On certain dates during the month of February 1984, Mr. Kring was not available for duty.

Following an investigation, the record of Trainman D. J. Kring was assessed 10 demerit marks, effective February 19, 1984 for:

Failure to properly protect assignment February 4, 13, 17 and 19, 1984 while assigned to the Trainmen's Spareboard at Hornepayne.

The Union appealed the discipline on the grounds that it was not warranted.

The Company declined the 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:

D. W. Coughlin – Manager Labour Relations, Montreal
J. B. Bart – Labour Relations Officer, Montreal
J. A. Sebesta – Coordinator Transportation, Montreal
G. G. Rosenbloom – Transportation Control Officer, Montreal
K. P. Dejean – Senior Transportation Engineer, Montreal
S. C. Thomas – Trainmaster, Nakina.

And on behalf of the Union:

T. G. Hodges – Vice-General Chairman, Toronto
R. Byrnes – Secretary, General Committee, Toronto
W. G. Scarrow – General Chairman, Sarnia
D. Kring – Grievor

AWARD OF THE ARBITRATOR

In this case the grievor, Mr. D.J. Kring, was assessed 10 demerit marks for his not being available for duty while assigned to the trainmen's spareboard at Hornepayne on February 4, 13, 17 and 19, 1984. For the purpose of clarity, it is fair to say that the grievor, in the vernacular of the railway trade, was allegedly "playing the spareboard" for his own particular convenience and advantage.

The interesting aspect of this case is that the grievor has admitted his infraction and, as a result thereof, all that should really be before me is the appropriateness of the disciplinary penalty. Nonetheless, the Trade Union conducted its case and made its submissions mainly on the basis of whether the grievor had committed any infraction at all.

Firstly, the grievor, pursuant to paragraph (d) of Addendum 41 of the collective agreement, indicated by his signature that he accepted the findings of the Company with respect to his wrongdoing and thereby in accordance with its terms has simply made "an appeal of discipline in accordance with the grievance procedure ..."

Secondly, as the Company disclosed in its brief, the grievor stated that he was improperly playing the spareboard for his own purposes:

"The spareboard was rotating very slowly and I thought that I could go home to Capreol without affecting my spareboard position. As it turned out, the spareboard rotation quickened and I got caught in Capreol. I will ensure in the future to protect my turn and be available for duty."

In other words, the grievor clearly admitted that at the material time he was unavailable for duty off the Hornepayne spareboard.

In light of these admissions it is unnecessary for me to dwell upon the numerous arguments made by the Trade Union representative with respect to the completeness and accuracy of the Company's records, or the legitimacy of the grievor's alleged authorized leaves of absence from work. It suffices to say, particularly having regard to Mr. Kring's admissions, that his strategy, whether on a legitimate leave of absence or not, was to avoid responding to the Company's calls off the spareboard that did not suit his personal requirements.

Because of the grievor's abysmal record and the numerous warnings he had been given with respect to his work performance, I have no option but to characterize the Company's assessment of 10 demerit marks as a lenient measure. Accordingly, I have no intention to change the penalty. For all the foregoing reasons the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR