

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1446

Heard at Montreal, Wednesday, December 11, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Appeal of the discipline assessed the record of Track Maintenance Foreman R.J. Drover, 17 October 1984.

JOINT STATEMENT OF ISSUE:

On 17 October 1984 Mr. Drover and his crew were discovered in the Whitborne Track Headquarters Building at 1605 hours by Supervisor of Maintenance R.H. Wicks and Roadmaster A. Hurley. Their hours of work were 0745 hours to 1645 hours.

Following an investigation held on 30 October 1984 Mr. Drover was assessed 15 demerit marks for violation of Rule 2.6 and 2.8, Section 2, Part I, Rules for Foremen, Maintenance of Way Rules 1233E and violation of Rule 1.24, Part II, General Rules, Maintenance of Way Rules 1233E.

The Brotherhood contends that the discipline assessed was unwarranted.

The Company denies the Brotherhood's contention.

FOR THE BROTHERHOOD:

(SGD.) PAUL A. LEGROS
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

J. Russell	– System Labour Relations Officer, Montreal
T. D. Ferens	– Manager Labour Relations, Montreal
B. J. Everard	– Manager Employee Relations, TerraTransport, St. John's
R. E. Sparkes	– Division Engineer, TerraTransport, St. John's
R. H. Wicks	– Supervisor Maintenance, TerraTransport, St. John's

And on behalf of the Brotherhood:

P. A. Legros	– System Federation General Chairman, Ottawa
R. Y. Gaudreau	– Vice-President, Ottawa
J. J. Roach	– General Chairman, Moncton
A. Toupin	– General Chairman, Lasalle

AWARD OF THE ARBITRATOR

The uncontradicted evidence established that the grievor, Track Maintenance Foreman R. J. Drover, and crew were discovered at approximately 40 minutes prior to their departure time on the afternoon tour of duty of October 17, 1984, at Whitbourne Track Headquarters. The grievor was assessed 15 demerit marks for his failure to ensure that both he and his crew were engaged during scheduled work hours in productive work on the Company's behalf. The grievor's infraction was all the more serious because of the supervisory duties and responsibilities he exercised with respect to his crew. This, in itself, would constitute misconduct that would warrant a disciplinary penalty. (See: **CROA 1384**).

The grievor's excuse for the premature termination of his crews shift that afternoon was because he was required to attend a personal business appointment some distance away from the work site. Accordingly, he intended to apply his "banked" overtime credits for the purpose of justifying his early absence (as well as his crew's) from the work site.

It is my view that the issue of whether or not the grievor had a legitimate excuse for absenting himself from employment at the time in question or could properly apply unused overtime credits as he intended is not germane to the disposition of this case. The important point to stress is that the grievor cannot rely on any of these arguments as an explanation for his alleged misconduct unless he first sought and secured the permission of his superiors for the purpose of leaving work before the scheduled departure time. Without such authorization the grievor was in clear violation of his duties and responsibilities as a Track Maintenance Foreman and therefore was properly disciplined for his actions.

Moreover, because of his supervisory responsibilities and the infraction (insubordination) that had hitherto been recorded on his personal file I have not been convinced of any mitigating circumstances that should result in the alteration of the 15 demerit marks the grievor was assessed.

Accordingly, the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR