

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1449

Heard at Montreal, Wednesday, December 11, 1985

Concerning

CANADIAN NATIONAL RAILWAYS

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Appeal of dismissal of R.J. Tino of Windsor, Ontario.

JOINT STATEMENT OF ISSUE:

At 0800 hours on 17 April 1985 Mr. Tino reported for his regular assignment as Carload Clerk at the Windsor Carload Centre. At the beginning of his shift he was advised that Carload Supervisor Johnson would sit in with him. At approximately 0805 hours Mr. Tino left his desk, spoke with the Assistant Carload Manager, and then left work.

The Company assessed 30 demerits to Mr. Tino's record for "leaving your assignment without permission and failure to complete your assignment on Wednesday April 17, 1985". Mr. Tino's record then stood at 65 demerits. Effective June 7, 1985 the Company dismissed Mr. Tino due to his accumulation of demerits.

The Brotherhood contends that the discipline assessed is unwarranted and requests that Mr. Tino be reinstated without loss of seniority, wages or other benefits. The Company denies the Brotherhood contention and has declined the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) J. D. HUNTER

FOR: NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH

ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS.

There appeared on behalf of the Company:

W. W. Wilson	– Manager Labour Relations, Montreal
S. A. Macdougald	– Labour Relations Officer, Montreal
A. E. Heft	– Labour Relations Officer, Toronto
E. Sahli	– Assistant Manager, Carload Centre, Windsor
G. Johnson	– Carload Supervisor, Windsor

And on behalf of the Brotherhood:

R. J. Stevens	– Acting Regional Vice-President, Toronto
R. J. Tino	– Grievor.

AWARD OF THE ARBITRATOR

The grievor, Mr. R.J. Tino, was dismissed from his position of Carload Clerk at the Windsor Carload Centre for "leaving your assignment without permission and failure to complete your assignment without permission and failure to complete your assignment on Wednesday, April 17, 1985".

At the time of the culminating incident the grievor had accumulated 35 demerit marks. He was assessed 30 demerit marks for the incident that resulted in his termination. The grievor has 19 years' service with the Company.

Apparently, the grievor was encountering difficulty in discharging the functions of his position because of the busy workload. As a result of his complaints the Company assigned Mr. G. Johnson, Carload Supervisor, to monitor his activities "for part of the day" on April 17, 1985. Mr. Johnson took a seat approximately three (3) feet away from the grievor's work station in order to perform his monitoring duties.

It is common ground that the grievor complained that he could not work under the pressure of having Mr. Johnson observe his activities in such close proximity..

The Company's version of Mr. Tino's reaction (which I readily accept as true) was that he picked himself up and put on his jacket and proceeded to leave the premises. As he departed he told Mr. E. Sahli, Assistant Manager Carload Centre, that he was going home. Mr. Sahli warned the grievor that if he went home he was to be taken out of service. This version of events was confirmed by several employees who were in the vicinity of the incident as it occurred.

Mr. Tino stated that when he advised Mr. Sahli of the pressured arrangement of his work situation he (Mr. Sahli) told him to go home. He simply obliged Mr. Sahli by obtaining his jacket and then left the work premises.

Mr. Johnson testified that he made written notes of the incident at the time it occurred. And, moreover, his written recitation of the event in no manner matched the version given by the grievor. Indeed his written version conformed to the statements made by Mr. Sahli.

As a result of my preference for the Company's version where a conflict exists with the version of the incident provided by Mr. Tino I am satisfied that the Company had cause to discipline the alleged infraction that occurred.

Notwithstanding the grievor's failure to admit his wrongdoing (and thereby express some contrition), I find it difficult to accept the discharge penalty as an appropriate sanction for an incident committed by an employee with 19 years' service who had accumulated 35 demerit marks at the time of his infraction. Quite clearly, the grievor, owing to his mediocre record, has exhibited an attitudinal problem with respect to the discharge of his work responsibilities. This may very well be attributable, in my view, to his professed difficulties in accommodating himself to a busy work environment.

If my assessment of the grievor's situation is accurate I would propose and direct the following remedy as a more appropriate disciplinary sanction than the discharge penalty:

- (i) The grievor's discharge is to be removed from his record and is to be substituted with a suspension from the date of his discharge to the date herein;
- (ii) The grievor for purposes of his employment status is to be treated as a probationary employee for a period of one year from the date of reinstatement; during the period of a year the grievor is to be provided with training assistance if required;
- (iii) After the one year's probationary period is served the grievor is to be treated as a regular employee with full seniority;
- (iv) The grievor is to meet with his supervisors before reinstatement and is to provide them with an undertaking to comply with the rules and regulations of the work place.

I shall remain seized of this award for purposes of implementation.

(signed) DAVID H. KATES
ARBITRATOR