

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1501

Heard at Montreal, Tuesday, April 8, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Appeal of the discipline assessed the record of Assistant Track Maintenance Foreman John G. Ferris, 28 December 1984.

JOINT STATEMENT OF ISSUE:

On 28 December 1984 Mr. Ferris left a track motor car unattended on No. 1 Track. The motor car was stolen and was subsequently involved in a collision with Train No. 218 at Mile 5.6 on the Allanwater Subdivision.

Following an investigation, Mr. Ferris was assessed 20 demerit marks for violation of Form 1233E, Part I, Section 4, Pages 4-6, Paragraph 4.3.8 and 4.3.9 which resulted in his discharge for accumulation of demerit marks.

The Union contended that the discipline assessed was unwarranted.

The Company disagrees with the Union'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

And on behalf of the Brotherhood:

P. A. Legros – System Federation General Chairman, Ottawa
R. Y. Gaudreau – Vice-President, Ottawa
W. Montgomery – General Chairman, Belleville
J. G. Ferris – Grievor

AWARD OF THE ARBITRATOR

At the time of the culminating incident the grievor had accumulated 55 demerit marks.

The grievor was discharged for leaving a Company vehicle unattended resulting in its being stolen and ultimately its having collided with an oncoming train. The grievor has admitted his violation of Rules 4.3.8 and 4.3.9 of the Maintenance of Way Rules. For that infraction the grievor was assessed 20 demerit marks and was accordingly discharged.

The Trade Union attempted to challenge the propriety of the discharge in the light of the Company's alleged violation of the time limits contained in article 18.2 (e) of the collective agreement with respect to the taking of corrective action following an employee's disciplinary investigation.

Since that issue was not incorporated into the Joint Statement of Issue the Company objected to my consideration of that particular submission on jurisdictional grounds. In the absence of comment from the Trade Union I am obliged to sustain that objection.

Accordingly, given the seriousness of the culminating incident that resulted in the grievor's discharge and his abysmal disciplinary record, I have no choice but to deny the grievance.

(signed) DAVID H. KATES
ARBITRATOR