

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1860

Heard at Montreal, Wednesday, 14 December 1988

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed Yard Foreman W. Czumak, Toronto, 23 May 1987.

JOINT STATEMENT OF ISSUE:

On the 23rd May 1986, Mr. W. Czumak was employed as Yard Foreman on the 2200 Dual Control Yard Assignment at MacMillan Yard, Toronto, Ontario. During the course of his shift, Mr. Czumak booked sick and did not complete the shift.

An investigation was conducted into certain events occurring during the course of the shift following which Yard Foreman Czumak was assessed 25 demerit marks for: **1.** Failure to comply with Supervisor's instructions resulting in delay to assignment; **2.** Improper submission of time return; **3.** Failure to comply with the requirements of MacMillan Yard Notice #075-87 dated 15 April 1987; **4.** Booking sick to avoid completion of duty.

The Union appealed on the grounds that the discipline was unwarranted and that the investigation was not conducted in compliance with Addendum 41 to Agreement 4.16.

The Company declined the appeal.

FOR THE UNION:

(SGD.) W. G. SCARROW
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) M. DELGRECO
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. B. Bart – Manager, Labour Relations, Montreal
P. D. Morrissey – Labour Relations Officer, Montreal
D. E. Lussier – Co-Ordinator, Transportation, Montreal

And on behalf of the Union:

W. G. Scarrow – General Chairman, Sarnia
L. W. Karn – Vice-General Chairman, Windsor
R. J. Roach – Local Chairman, Toronto
B E. Phillips – Local Chairman, Belleville
W. Czumak – Grievor

AWARD OF THE ARBITRATOR

On a review of the material the Arbitrator is satisfied that the grievor did fail to comply with his supervisor's instructions, failed to make the necessary correction of a time return, failed to observe a posted notice not to take lunch in the cafeteria in MacMillan Yard and booked sick without justification.

Bearing in mind the observations related in **CROA 1858**, the Arbitrator is satisfied that the rulings with respect to the pertinence of evidence made by the investigating officer did not deprive the grievor of a fair and impartial hearing as contemplated under Addendum 41 to the Collective Agreement.

On the whole the evidence reveals the grievor to be a junior employee, of some two years' service, whose approach to the interpretation and application of the rules of the workplace was more clever than wise. He was demonstrably uncooperative with his supervisors during the course of his shift on May 23, 1986 and ultimately booked off sick for a period of an hour and a half on the pretense that the harsh words of a supervisor caused him to be too upset to work. As a result of that action his entire yard crew was unable to do any productive work for the balance of the shift.

The grievor's record, moreover, is not impressive. It includes, among other things, a recorded reprimand on July 18, 1986 for booking sick to avoid the completion of a tour of duty, and the threat of physical violence made against both a fellow employee and a supervisor (*see CROA 1858*). In the circumstances the Arbitrator cannot find that the imposition of twenty-five demerits was inappropriate.

For these reasons the grievance is dismissed.

December 16, 1988

(Sgd.) MICHEL G. PICHER
ARBITRATOR