

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2000

Heard at Montreal, Wednesday, 14 February 1990

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

And

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Discharge of Trainman J.J. Teather, PIN 186941, 20 December 1988, for accumulation of demerit marks in excess of 60.

#### **JOINT STATEMENT OF ISSUE:**

Effective 3 December 1988, Trainman J.J. Teather, PIN 186941, was assessed 15 demerit marks for being unavailable for duty on 12 occasions during months of September, October and November 1988, while assigned to the Joint Spareboard at London, Ontario. This assessment brought the total number of demerit marks on his record to 70. He was consequently dismissed for accumulation of demerit marks.

The Union appealed the dismissal on the basis that the investigation was unfair, not in keeping with the intent of the collective agreement, and in any case the discipline assessed was extremely severe.

#### **FOR THE UNION:**

**(SGD) T. G. HODGES**  
GENERAL CHAIRPERSON

#### **FOR THE COMPANY:**

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

There appeared on behalf of the Company:

M. S. Hughes	– Labour Relations Officer, Montreal
S. F. McConville	– Labour Relations Officer, Montreal
J. B. Bart	– Manager, Labour Relations, Montreal
M. S. Fisher	– Co-Ordinator, Transportation, Montreal
P. J. Benedetti	– Trainmaster, London

And on behalf of the Union:

G. J. Binsfeld	– Secretary, G.C.A., St. Catharines
M. Gregotski	– Vice-General Chairman, St. Catharines
R. A. Beatty	– Local Chairman, Hornepayne

### **AWARD OF THE ARBITRATOR**

The material establishes to the Arbitrator's satisfaction that the grievor was unavailable for work on an unacceptable number of occasions, without apparent justification, in the period of September through November 1988. He had been both disciplined and counselled on a number of occasions in respect of his failure to meet his obligations of regular attendance, and his chronic difficulties with missed calls. In my view the Company was justified in viewing his conduct over the three month period as constituting a culminating incident for which the assessment of fifteen demerits fell within the reasonable range of disciplinary response. (*See CROA 1168, 1331.*)

Nor can the Arbitrator accept the submission of the Union to the effect that the grievor was in any way denied a fair investigation, as contemplated under the terms of the Collective Agreement. It does not appear disputed that the grievor had adequate notice of the time and place of the investigation, and of the fact that his failure of attendance over the period of three months would be examined. His answers to the questions, revealed in the transcript of the investigation, indicate that he did have, or at least claimed to have, a reasonably detailed recall of the events over the three months which he maintains justified his failure to respond to calls. On the whole there is no prejudice to the grievor apparent on the face of the record. Moreover, it appears to the Arbitrator difficult to assert that an investigatory review of the events of three months prior is intrinsically unfair, given that arbitration hearings themselves typically involve relatively close scrutiny of events which are even more removed in time. In the circumstances I must conclude that no violation of the grievor's procedural rights is disclosed in the material before me.

For the foregoing reasons the grievance must be dismissed.

February 14, 1990

**(Sgd.) MICHEL G. PICHER**  
**ARBITRATOR**