CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2048

Heard at Montreal, Tuesday, 11 September 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Appeal of the discipline and subsequent discharge for accumulation of demerit marks assessed the record of H. Carroll of Moncton, effective December 1, 1989.

JOINT STATEMENT OF ISSUE:

On November 27, 1989, Classified Labourer H. Carroll was required to attend an investigation with respect to his timekeeping for the period of time from June to November 1989. Subsequent to the investigation, H. Carroll was assessed 15 demerit marks for poor timekeeping, which resulted in his discharge for accumulation of 65 demerit marks.

The Brotherhood contends that the discharge of H. Carroll was for unjust cause and was arbitrary and discriminatory. The Brotherhood requests that he be reinstated and compensated for all lost wages and benefits.

The Company disagrees.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) TOM MCGRATH	(SGD) W. W. WILSON
NATIONAL VICE-PRESIDENT	for: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. C. St-Cyr	– Manager, Labour Relations, Montreal
G. C. Blundell	– Manager, Labour Relations, Moncton
C. J. Cormier	– Superintendent, Motive Power, Moncton
J. R. Ivany	– Program Supervisor Operations, Moncton
S. Grou	– System Labour Relations Officer, Montreal
E. Vick	– Labour Relations Officer, Moncton

And on behalf of the Brotherhood:

T. A. Barron	– Representative, Moncton
I. S. Gauvin	– Local Chairman, Moncton
H. J. Carroll	– Grievor

AWARD OF THE ARBITRATOR

The issue to be resolved is whether the timekeeping record of the grievor between June and November of 1989 merited the assessment of fifteen demerits, resulting in his discharge. The record reveals that the grievor booked off sick on four separate occasions between June and November of 1989. When he was investigated in November he could not give any explanation for his absence on August 6, and with respect to his missing work on October 21, 1989 he explained that he booked off sick because he was exhausted from a hunting trip. In the Arbitrator's view it is axiomatic that an employee who is absent must be able to justify to the Company his or her failure to attend at work and, secondly, that the reason advanced for the inability to be at work must not be unreasonable.

The Brotherhood's representative submits firstly that it is inappropriate for the Company to impose discipline for absenteeism that is beyond the employee's control. While in a general sense I must agree that that position is well founded, and is consistent with the preponderant Canadian arbitral jurisprudence, it is of limited application in the facts of this case. The grievor has failed to establish, to the satisfaction of the Arbitrator, that his absences on all of the occasions in question were innocent, as the Brotherhood's representative maintains. That, in my view, is particularly evident as regards the inability to attend at work because of exhaustion after a hunting trip. That incident, coupled with the grievor's long established pattern of "Monday morning" absences raises a serious question about the validity of his claim of innocent absenteeism on the dates in question.

The material before the Arbitrator establishes that the unauthorized absences of the grievor were more than twice the average of the general work force in the shop where he was employed. It also reveals that he was repeatedly disciplined and counselled in respect of the unacceptable quality of his timekeeping and attendance. There was, moreover, no grievance taken against the assessment of discipline on the four separate occasions between February 25, 1988 and February 6, 1989.

In addition, the Brotherhood's representative maintains that there is no culminating incident which would allow the Company to call into play the grievor's prior record, as it did in November of 1989. Specifically, he argues that the grievor's final absence, on November 4, was justified by a medical certificate, albeit the document was presented to the Company after his discharge. In the Arbitrator's view the doctrine of culminating incident does apply in the circumstance of this case, but not in the sense pleaded by the Brotherhood's representative. The evidence of Mr. C.J. Cormier, Superintendent of Motive Power at Moncton, who made the decision to discipline the grievor, establishes that the review of Mr. Carroll's record was not prompted by the incident of November 4, but was the result of a routine periodic review of attendance records made in November of 1989. In the Arbitrator's view it is within the prerogative of the Company to conduct such periodic reviews and, where an employee's record over a period of time seems unacceptable, to treat that cumulative performance as a culminating incident. That is what transpired in this case. In the circumstances, if any of the absences arising during the period reviewed is worthy of discipline, however minor, the Company is entitled to take into account the employee's prior record. For the reasons touched upon above, the hunting trip incident alone would justify, I think, the assessment of discipline, thereby bringing into play the doctrine of culminating incident in the circumstances of this case.

Are there any mitigating factors to be considered in this case? In the Arbitrator's view there are two. The first is that the grievor is an employee of seventeen years' service. The second is that, from the record before me, his difficulties with timekeeping seem to have arisen in a serious way over a relatively short period. The sixty-five demerits assessed against him were all accumulated between

February 25, 1988 and November 27, 1989, the bulk of them falling within a single period of one year ending January 11, 1989. For the reasons touched upon above, I am satisfied that his failure in this regard was, to a great extent, blameworthy and deserving of discipline. I am further satisfied that the Company was justified in assessing discipline against the grievor as of November 27, 1989. I am not, however, persuaded in light of the grievor's length of service that discharge is appropriate in these circumstances, and that the legitimate interests of both the employee and the employer cannot otherwise be accommodated. In my view the reinstatement of the grievor on strict conditions relating to his future attendance, subject to a lengthy suspension, should suffice to protect the legitimate interests of the Company while bringing home to the grievor the need for genuine rehabilitation in respect of his future attendance habits.

For the foregoing reasons the grievance is allowed, in part. The grievor shall be reinstated into his employment, without compensation and without loss of seniority. His reinstatement is, however, conditional upon maintaining a record of unauthorized absences no greater than the average for all employees at his work location, for a period of

not less than two years from the date of his reinstatement. If, during any six month period the grievor should not maintain that standard the Company shall be justified in considering him to have failed to respect the conditions of his reinstatement, whereupon he may be terminated for cause. The Company shall be entitled to treat the accumulation of late arrivals at work and early departures from work as the equivalent of absence, albeit on a reasonably weighted basis, for the purposes of this award. Needless to say, Mr. Carroll must appreciate the gravity of his situation and the importance of adhering to general standards of timekeeping and attendance in the future.

September 14, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR