

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2322

Heard at Montreal, Wednesday, 10 February 1993

concerning

ONTARIO NORTHLAND RAILWAY

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The assessment of 10 demerit marks against the record of General Audit Clerk, J. Rosseter.

JOINT STATEMENT OF ISSUE:

Clerk J. Rosseter was absent from work on February 10, 1992. Following an investigation, Mr. Rosseter was assessed 10 demerit marks for failure to notify and obtain supervisory approval prior to taking a vacation day on February 10, 1992.

The Union appealed the discipline contending that Mr. Rosseter was not away without leave and that he had obtained permission to take the day's vacation. The Union requested that Mr. Rosseter's record be cleared.

The Company disagreed with the Union's contention and refused to remove the discipline. A resolution was not reached through the grievance procedure.

FOR THE UNION:

(SGD.) E. FOLEY
ASSISTANT DIVISION VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) P. A. DYMENT
PRESIDENT

There appeared on behalf of the Company:

M. J. Restoule – Manager, Labour Relations, North Bay
L. A. Fortier – Supervisor, Freight Revenues, North Bay

And on behalf of the Union:

H. Caley – Counsel, Toronto
E. Foley – Vice-President, North Bay
J. Rosseter – Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that on Friday, February 7, 1992 Mr. Rosseter was requested to officiate at a ski race to be held on Monday, February 10. The evidence discloses that he did not request authorization from his supervisor. It appears that at a point in time when she was absent from the office he merely notified the Senior Principal Clerk, Mr. Paul Cleroux. It is common ground that Mr. Cleroux, who is a member of the bargaining unit, responded that Mr. Rosseter should inform his supervisor. The evidence further discloses that later that day Ms. Fortier was in her office, and that Mr. Rosseter delivered a file to her, apparently while she was speaking on the telephone.

On the whole, the Arbitrator is satisfied that Mr. Rosseter failed to make reasonable efforts to seek authorization from his supervisor for the taking of a vacation day on Monday, February 10, 1992, as had been suggested to him by Mr. Cleroux. He clearly had an opportunity to do so during the course of the afternoon of February 7th. In the circumstances I am satisfied that the Company had just cause to assess discipline against him, and that the 10 demerits awarded were within the appropriate range of discipline.

The Arbitrator can find nothing in the investigation conducted by the Company to be in violation of the standards of fairness provided for in article 8 of the collective agreement. The Union's representative was given a reasonable opportunity by the investigating officer, Ms. Fortier, to provide written statements from other employees which the Union sought to bring in support of Mr. Rosseter's case. Moreover, the failure to receive those statements cannot be viewed as material to the merits of the investigation. Three of the employees would have confirmed

Mr. Rosseter's conversation with Mr. Cleroux, an issue never challenged by the Company. It appears that the third witness would have related another event whereby he advised a clerk with temporary supervisor authority, in the absence of his own supervisor, that he was going home because he was ill. That evidence, in the Arbitrator's view, would have made no material difference to the case at hand, which involves a very different circumstance.

For the foregoing reasons the grievance must be dismissed.

February 12, 1993

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