

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2357

Heard at Montreal, Thursday, 15 April 1993

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS**

DISPUTE:

Dismissal of Mr. Claude Beaudin, flagman, Monterm Terminal.

JOINT STATEMENT OF ISSUE:

On August 5, 1992, Mr. Beaudin received 20 demerits for his absences on April 21, 22, and 23, May 6, 7, 12, and 28, and on June 3, 4, 5, 6, 7, 9, 10, 1992, giving him a total of 70 demerits.

On August 6, 1992, Mr. Beaudin received 25 demerits for refusing to appear at the investigations scheduled for June 16, June 19, and July 2, 1992, giving him a total of 95 demerits.

On September 3, 1992, Mr. Beaudin was advised of his dismissal for accumulation of 95 demerits.

The Brotherhood submits that the disciplinary sanctions imposed in the two cases were unjustified, and that the grievor was not advised of his dismissal until 28 days after the decision was made, contrary to article 24.2 of agreement 5.1. Article 24.2 states that "The decision will be rendered within 21 calendar days from the date the statement is taken from the employee being investigated." The Brotherhood requests the reinstatement of the grievor with full seniority and compensation for lost wages and benefits, at the current rate of interest.

The Company maintains that the disciplinary sanctions imposed were justified and that collective agreement 5.1 contains no specific article on the subject of time limits.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD.) T. N. STOL
NATIONAL VICE-PRESIDENT

(SGD.) J. E. PASTERIS
for: REGIONAL VICE-PRESIDENT

There appeared on behalf of the Company:

O. Lavoie	- Officer, Labour Relations, Montreal
D.C. St-Cyr	- Manager, Labour Relations, Montreal
M. Gardner	- Assistant Manager, Monterm Terminal

And on behalf of the Brotherhood:

L. St-Louis	- Regional Vice-President, Montreal
C. Beaudin	- Grievor

AWARD OF THE ARBITRATOR

The Arbitrator cannot accept the Brotherhood's objections concerning the procedure followed by the Company. For the reasons expressed in **CROA 1696**, I consider that the time limits contained in article 24.2 of the agreement concerning the communication of its decision are director and not mandatory, as submitted by the Brotherhood. Furthermore, there is nothing in that article which requires the notice to appear for an investigation must be issued in any particular form, or that a true copy of such notice must be provided to the Brotherhood, even if that is the general practice. In the instant case, the particular circumstances of the grievor justified, I think, a particular approach on the part of the Employer.

The Arbitrator deems that the Company was justified in concluding that Mr. Beaudin merited severe discipline for his absenteeism, as well as for the fact that he refused to attend the disciplinary investigations of which he had been duly advised. The employee appears to have the mentality of a "procedure monger" who, in the long run, risks causing himself serious problems.

However, there are extenuating circumstances in this case which justify a reduction in the discipline imposed. Firstly, Mr. Beaudin is an employee who has twenty years of service with the Company. Secondly, his absences for the month of April relate, in part, to a work accident, and to his contesting his assignment to light duties. On the whole, even though the Arbitrator accepts the Company's position and rules that the grievor was wrong, it seems to me that his reinstatement, under certain conditions, would serve to protect the interests of the Company while providing the grievor with a last chance to improve his performance in terms of absenteeism.

For these reasons, the Arbitrator orders that Mr. Beaudin be reinstated into his employment, without compensation and without loss of seniority, with his discipline file to stand at 50 demerits. If, during the two years following his return to work, for whatever reason, Mr. Beaudin's level of attendance is less than the average for the other employees in his department, calculated over a total period of six consecutive months, the Company will have the right to terminate his reinstatement, without recourse to arbitration except on the question of the calculation of the grievor's absences and of the average for the department.

April 16, 1993

(Sgd.) MICHEL G. PICHER
ARBITRATOR