

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2614

Heard in Calgary, Tuesday, 9 May 1995

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL  
WORKERS UNION OF CANADA (CAW-CANADA)**

**EX PARTE**

**DISPUTE:**

The imposition of ten (10) demerit marks and 6 month restricted duties imposed on employee K. Kehler for allegedly leaving work early without permission.

**UNION'S STATEMENT OF ISSUE:**

On October 30, 1993, Mr. Kehler left work 55 minutes prior to the end of his shift due to illness. On November 4, 1993, Mr. Kehler was counselled in his regard, by Supervisor Strickland. On November 5, 1993, Mr. Kehler filed formal harassment charges against Supervisor Strickland.

On November 10, 1993, Mr. Kehler was advised that a formal investigation would be held into his leaving early on October 30, 1993. It is the Union's position that the discipline was largely as a result of the harassment charges filed against the Supervisor. It is further the Union's position that the restrictions placed on the grievor bear no resemblance to the alleged infraction and are therefore discriminatory.

Notwithstanding the foregoing, the Union contends that even if the charges had merit, the discipline is excessive and lacking in even handedness.

The Company contends the discipline is warranted and not discriminatory.

**FOR THE UNION:**

**(SGD.) D. OLSHEWSKI**

**FOR: NATIONAL COORDINATOR**

There appeared on behalf of the Company:

H. Koberinski – Labour Relations Consultant, Toronto  
R. Strickland – Manager, Intermodal Services, Winnipeg

And on behalf of the Union:

D. Olszewski – Regional Coordinator, Winnipeg  
R. Storness-Bliss – Regional Coordinator, Vancouver

### AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond controversy, that on October 30, 1993 Mr. Kehler was on duty as the sole intermodal clerk at the Winnipeg Intermodal Terminal in the late night hours. Although he was scheduled to go off duty at midnight, he closed the terminal gate and left work an hour early. It appears that he did so because he felt ill. However, the Arbitrator is satisfied that he advised no one of his leaving, with the result that no one was in charge of the terminal gate. In fact, a driver from the Transex Transport Company arrived after the grievor had left, and suffered substantial delay and uncertainty as to how to complete his delivery, until the Intermodal yard crew, still on duty, let him in. It seems that the problem came to the attention of the Company when a dispatcher for the Transex Transport Company called the Intermodal Operations Manager at home to advise him that its driver could not gain access to the terminal, apparently at approximately 23:10 hours. When the manager was unable to raise any answer on the telephone upon attempting to call the grievor at work, he went to the terminal and discovered the problem.

Particular concern arises in the instant case by reason of a written statement provided by another employee. In an E-mail message dated November 26, 1993 Intermodal Clerk L. Wiebe relates that he was approached by the grievor on November 1, 1993. He states that Mr. Kehler requested a letter from him stating that he had been informed by the grievor, at the time, that he was leaving work on October 30, 1993 because he was ill. Mr. Wiebe states that the grievor told him that if he did not provide the letter requested "... he would make things very rough on me. And that he would write me up for any and all past and future situations that I have contrary to Company Policies. He had tried to intimidate me to do this for him as he had already told [Supervisor] Mr. Bob Strickland the fact he had told me he was sick and leaving when in fact he did not inform me he was leaving. ..."

The Union alleges, in part, that the decision to conduct a disciplinary investigation of the grievor in relation to this incident was not taken until the grievor made allegations of harassment against the Manager, Intermodal Operations, Mr. R.G. Strickland, on November 5, 1993. The grievor alleges that Mr. Strickland questioned him on November 4, 1993 about his having left early on October 30th, and cautioned him not to do it again, indicating that that would be the end of the matter. The account of that conversation by Mr. Strickland, however, is different, and does not contain any statement to the effect that he indicated that the conversation of November 4, 1993 would be the end of the matter. The Union also points to the fact that other employees, notably equipment operators, have not been assessed discipline to the same degree as was assessed against the grievor for what it submits were similar timekeeping infractions.

The Arbitrator cannot accept the submission of the Union in respect of the alleged inequities. Firstly, there is nothing in the evidence to confirm the grievor's assertion that Mr. Strickland indicated to him that the matter would be considered closed after their conversation of November 4, 1993. Indeed, it is denied by Mr. Strickland. Moreover, the disciplinary investigation, at which the grievor was represented by his local chairman, is devoid of any objection or reference to the alleged closing of the matter by Mr. Strickland, in conversation with the grievor or otherwise. On balance, the Arbitrator is compelled to conclude that there was no such statement or undertaking made by the manager.

The evidence establishes, to the Arbitrator's satisfaction, that the grievor effectively closed the terminal one hour before the end of his shift on October 30, 1993 and advised no one in the Company of his action. Even if I were to accept, which I do not, the grievor's statement that he attempted to call Supervisor Strickland at home and received no answer, it remained incumbent upon him to at least advise another employee at the work site, so that the gate did not remain unattended. His responsibilities and circumstances are plainly different from those of other employees, such as equipment operators, whose examples are raised by the Union. In the result, I am satisfied that the assessment of ten demerits and the restriction of the grievor's duties, so that he could not in the future work without supervision, for a period of six months, was reasonable in the circumstances. The grievance must therefore be dismissed.

May 18, 1995

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