

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3088

Heard in Montreal, Tuesday, 8 February 2000

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The imposition of 20 demerit marks to the file of Mr. Jean Savard, lead hand. (translation)

JOINT STATEMENT OF ISSUE:

Following an investigation held June 16, 1999, Mr. Jean Savard was assessed 20 demerit marks for insubordination on June 1, 1999 when he was lead hand.

The Union contends that the imposition of 20 demerit marks is unjustified or, in the alternative, too severe.

The Company rejects these allegations and the grievance of the Union. (translation)

FOR THE UNION:

(SGD.) A. ROSNER

NATIONAL REPRESENTATIVE

FOR THE COMPANY:

(SGD.) S. GROU

FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

J. Coleman	– Counsel, Montreal
S. Grou	– Manager, Employment Legislation, Montreal
S. Gagné	– Terminal Manager, Monterm
M. Gardner	– Manager – Road Operations, Monterm
M. Vachon	– Senior Terminal Coordinator, Monterm
G. Chartrand	– Terminal Coordinator, Monterm
D. S. Fisher	– Director, Labour Relations, Montreal

And on behalf of the Union:

A. Rosner	– National Representative, Montreal
R. Johnston	– President, Council 4000, Montreal
R. Latendresse	– Local Representative – Owner-Operators
C. Perron	– Witness
A. Gagné	– Witness
J. Nadeau	– Witness
R. Simoneau	– Witness
J. Savard	– Grievor

AWARD OF THE ARBITRATOR

The grievor, Mr. Jean Savard, is an employee of some twenty years' service. For several years he has been a member of the national bargaining committee of the Union's Council 4000, dealing with Canadian National Railways. In addition to periodic responsibilities concerning bargaining, he is involved in the ongoing administration of collective agreement 5.1, as well as the intermodal supplemental agreement and owner-operators collective agreement.

Article 22 of the Supplemental Agreement deals with leaves of absence for union business, and provides as follows:

22.1 Employees elected or appointed as salaried representatives of the Union shall, upon request, be granted leave of absence without pay while so engaged.

22.2 Employees elected or appointed to serve on committees for investigations, consideration and adjustment of grievances shall, upon request, be granted necessary leave of absence without pay.

22.3 Employees shall be granted leave of absence without pay to attend general meetings, union conventions and union business, and union meetings upon the request of the chief shop steward. Such leave of absence will only be granted when it will not interfere with the Company's business nor put the Company to additional expense.

It appears that on the morning of June 1, 1999 Mr. Savard was scheduled to absent himself from work to attend a union business meeting involving CNTL, for whose employees Mr. Savard acted as authorized union representative. It would appear that the grievor's attendance at the meeting was not absolutely essential, as it was not contemplated that the meeting would involve concluding or executing any amendments of the collective agreement. It also appears to the Arbitrator that there was no compelling reason why the meeting at CNTL could not have been rescheduled, a fact confirmed by CNTL Transport Director Michel Gardner in his own evidence at the hearing.

On the morning of June 1, Terminal Manager Donald Gagné determined that a back-log of work necessitated that Mr. Savard not absent himself for the meeting at CNTL. When he advised Mr. Savard that he must stay at work and make alternate arrangements for the meeting, the grievor refused. At a brief encounter in Mr. Gagné's office he asserted that it was his unqualified right to attend the meeting. Mr. Gagné repeated his direction that Mr. Savard was to remain at work. Unfortunately, Mr. Savard insisted that he would attend the meeting anyway, which in fact he did.

The record before the Arbitrator gives cause for serious concern. During the course of the investigation of Mr. Savard he was represented by Union Recording Secretary Guy Verdi. During the course of his investigation Mr. Verdi made a rather troubling statement, tantamount to an assertion that a union officer can absent himself or herself from work to perform union business notwithstanding a contrary directive from a member of management without any potential for discipline. While this Office is well aware of the jurisprudence of labour boards, and of boards of arbitration, which protect union members and officers in the lawful discharge of their duties, I am aware of no principle of law or labour relations so sweeping as that asserted by Mr. Verdi. The right of an employee to have a paid or unpaid leave of absence from work to conduct union business is not absolute and unconditional. It generally turns upon the specifically negotiated terms of the collective agreement. As is evident from the language of article 22.3, the parties to the instant collective agreement acknowledge that there may be circumstances where an employee who is a union officer may not in fact be granted a leave of absence to attend on union business, where such a leave would unduly interfere with the Company's business or incur additional expense.

The instant case need not, however, turn upon an interpretation of the provisions of article 22 relating to Union leaves of absence. Rather, it is best resolved on an application of the well established principle of "obey now – grieve later". That principle holds that an employee, confronted with a direction of management which he or she feels is improper is bound to carry out the direction, dealing with the issue of impropriety through the grievance and arbitration process. The only exceptions to the principle involve circumstances where obeying the direction might cause irreparable harm, or involve the employee in activity that is illegal or unacceptably dangerous to the employee or to others. In the case at hand there was clearly nothing compelling about the meeting which Mr. Savard wished to attend which would invoke the exceptions to the "obey now – grieve later" rule. While it is debatable whether his presence was in fact required at the meeting with CNTL management, the matter need not be disposed of upon that

basis. Clearly, there was nothing to prevent the re-scheduling of that meeting to a time which would not disrupt the Company's operations. Most importantly, faced with the clear directive from Mr. Gagné, Mr. Savard was bound to respect the order, subject of course to his ability to grieve the matter if he felt that there was a violation of his rights under article 22. His belief that he had an absolute right to leave notwithstanding his employer's directive, reflected in the statement of Mr. Verdi, is plainly wrong, and constitutes insubordination for which Mr. Savard was liable to a serious measure of discipline.

In the result, the Arbitrator is satisfied that the grievor was deserving of discipline for his insubordinate refusal to remain at work on June 1, 1999, as directed by his supervisor. The assessment of twenty demerits was, in the circumstances, justified and should not be disturbed. The grievance is therefore dismissed.

February 12, 2000

(signed) MICHEL G. PICHER
ARBITRATOR