CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 312

Heard at Montreal, Wednesday, October 13th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims that Article 24 of Agreement 5.1 was violated when a supervisor spoke to Mrs. S. Degagne and Miss N. Milks, Junior Clerks, Capreol, about their work habits.

JOINT STATEMENT OF ISSUE:

On March 16, 1971 their supervisor discussed their work habits with two junior clerks at Capreol. The Brotherhood claims that the supervisor should have given the employees 24 hours' notice and advised them of the charges against them, in accordance with Article 24.2 of the Agreement. The Company stated that since no discipline had been imposed Article 24 did not apply in the circumstances.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. A. PELLETIER	(SGD.) K. L. CRUMP
NATIONAL VICE-PRESIDENT	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. O. McGrath	– System Labour Relations Officer, Montreal
A. D. Andrew	– System Labour Relations Officer, Montreal
W. Wilson	– Labour Relations Assistant, Toronto
G. E. Villeneuve	– Office Services Assistant, Capreol,

And on behalf of the Brotherhood:

J. D. Hunter	– Regional Vice-President, Toronto
J. A. Pelletier	– National Vice-President, Montreal
R. Coté	– Local Chairman, Capreol
S. Degagné	– Grievor

AWARD OF THE ARBITRATOR

Articles 24.1 and 24.2 of the collective agreement are as follows.

> **24.1** An employee, who has completed his probationary period, will not be disciplined or discharged without an investigation.
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> **24.2** Investigations in connection with alleged irregularities will be held as quickly as possible. An employee may be held out of service for investigation (not exceeding three working days). He will be given at least one day's notice of the investigation and notified of the charges against him. This shall not be construed to mean that a proper officer of the Company, who may be on the ground when the cause for investigation occurs, shall be prevented from making an immediate investigation. An employee may, if he so desires, have the assistance of one or two fellow employees, or accredited representatives of the Brotherhood, at the investigation. Upon request, the employee being investigated shall be furnished With a copy of his own statement, if it is made a matter of record at the investigation. The decision will be rendered within 21 calendar days from the date the statement is taken from the employee being investigated. An employee will not be held out of service pending the rendering of a decision, except in the case of a dismissible offence.

In the instant case, the grievors were each called into a private office by their supervisor and spoken to critically with respect to their work. Subsequently, a letter was issued to each of the grievors setting out the substance of the interview. If in fact what was done constituted the imposition of discipline on the grievors, then the procedure called for by Article 24 was not followed and the discipline must be set aside. If, however, what was done did not constitute the imposition of discipline, then there has been no violation of the collective agreement and the grievance must be dismissed.

It should be noted that there is no issue before me as to the justification or otherwise for the supervisor's critical remarks. The issue is simply the correct characterization of what was done as constituting discipline or not. Whenever a supervisor gives advice, and particularly where he speaks critically to an employee, or issues a memo to him relating to his behaviour at work, the question may arise whether this constitutes "discipline" within the meaning of the collective agreement. Such a question arose in **Case No. 21** in which it was stated:

> There may well be situations in which the company quite properly communicates directly with an employee with respect to his work, and in particular with respect to working methods and safety practices. In most cases, no doubt, this is done by way of on-the-spot instruction or advice given by the immediate supervisor. This would not, however, prevent the issuing of written memoranda relating to such matters. Such instructions, reminders or other sorts of advice do not in themselves constitute "discipline", although the fact of the necessity of issuing such advice unusually frequently to a particular employee is a matter which might be taken into account where a disciplinary matter does arise, just as, for example, a foreman's "always having to speak" to an employee on some matter may be established, even though each of the individual occasions on which the foreman spoke to him did not constitute the imposition of discipline.
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> There is, therefore, a distinction between the sort of advice which may properly be given, and the actual imposition of discipline. A "warning" or "penalty warning" or "disciplinary memorandum" or whatever it may be called, is a form of discipline. It is often used as a part of a pattern of progressive discipline, and while it involves no immediate loss of work, there can be no doubt that a "warning" does have a cumulative effect, and may realistically be said to deprive the employee of some degree of job security. It is a serious matter, and its issuance affects recognizable and important rights of the employee. There must be proper cause for its issuance. By Article 24.1, discipline cannot be imposed without an investigation. Certainly a warning can be made the subject of a grievance.

In the instant case the facts of the grievors being called away to a private office, being spoken to with respect to matters that could properly be the subject of discipline (as for example, punctuality, carelessness, and talking too much while at work), and being sent letters confirming the substance of the interviews are all consistent with the claim that discipline (in the form of a "warning") was in fact imposed. On the other hand, having regard to the

circumstances of the grievors employment as junior clerks, it seems to me quite proper that they be called to an office where they might be spoken to privately, rather than in front of others. And while the subject matter of the interviews was within the area of discipline, the substance of what was said amounted to counselling and an exhortation to improve. It is perhaps the formalization of what was said by repeating it in a letter which most suggests a disciplinary tone to the incident. Perhaps it would have been better had the grievors been expressly advised that they were not being disciplined, and that the letter would not become part of their personal files.

In my view, although it is understandable that the grievors may have been somewhat disconcerted by the interviews, what took place did not adversely affect their status or rights, but was rather in the nature of "instructions, reminders or other sorts of advice" which, as contemplated in **Case No. 217** may be given to employees without amounting to discipline. The facts of the instant case fall on the other side of the line from those described in **Case No. 217**.

The events complained of do not amount to any blemish on the records of the grievors. They were not subject to discipline, and the provisions of Article 24 did not come into play. The grievances must accordingly be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR