CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 547

Heard at Montreal, Tuesday, May 11th, 1976

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Dismissal of Mr. W.G. Reeves, Waiter, P.E.I. Ferry Service.

JOINT STATEMENT OF ISSUE:

Mr. Reeves had been employed as a waiter since July 1, 1972. Up to June 10, 1975, his discipline record carried 40 demerit marks, attributable to failures to protect his assigned shifts or to give proper notice concerning absence from duty, on two occasions within the previous six months. One June 11, he allegedly again failed to report for work or give proper notice of his absence, and was given a further 20 demerit marks. This brought the total to 60, and Mr. Reeves was consequently dismissed for accumulation of demerit marks. The dismissal has been appealed, but the Company has declined to reinstate Mr. Reeves.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. A. PELLETIER	(SGD.) S. T. COOKE
NATIONAL VICE-PRESIDENT	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

A. D. Andrew	– System Labour Relations Officer, Montreal
Capt. J. M. Taylor	– Master, M.V. Abegweit, Borden
G. J. James	– Labour Relations Officer, Moncton,

And on behalf of the Brotherhood:

B. Hould	– Representative, Moncton
L. K. Abbott	– Regional Vice President, Moncton
J. A. Pelletler	– National Vice President, Montreal

AWARD OF THE ARBITRATOR

There are two questions which arise in a case such as this: 1) was there some proper occasion for the imposition of discipline? and 2) if so, was the penalty imposed a proper one, having regard to the circumstances and to the employee's record. In the instant case, it would be my view that on the second question, the penalty imposed would be upheld, if indeed it were found that there was no excuse for the grievor's failure to notify the Company of his inability to report for work. That would be my view in this case where the grievor, having relatively low seniority, had been penalized on two recent occasions to the same degree for the same offence.

The essential question in the instant case, then, is whether it has been shown (and the onus is on the Company to do so) that the grievor did improperly fail to notify the Company of his inability to report for work on the day in question. The material before me indicates that the grievor was ill on that day, and there is nothing to suggest the contrary. He did in fact notify the Company by telephone, but not until long after his reporting time. The material before me indicates, without contradiction, that the grievor made a number of efforts to contact the Company, but that on the occasions he called – and he could not, in the circumstances, have been expected to stay by the telephone continuously – the line was busy.

On the material before me, it appears that the grievor was sick, that he made a number of efforts to notify the Company, and that these were not successful until late in the day. In all the circumstances, I do not consider that it has been shown that the grievor improperly failed to notify the Company of his absence. This is a discharge case, as a result of the application of the discipline policy, and the Company has the onus of showing by clear evidence that there was conduct on the employee's part which justified discipline.

It is therefore my award that the grievance be allowed. The grievor is entitled to reinstatement in employment, and to compensation for loss of earnings (subject to his duty of mitigation). On reinstatement, the grievor's discipline record should stand as it was immediately before the penalty in question was imposed.

(Sgd.) J. F. W. WEATHERILL
ARBITRATOR