CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1320

Heard at Montreal, Tuesday, January 8th, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of discipline assessed the record of Locomotive Engineer R.D. McTaggart, Toronto, effective June 16, 1983.

JOINT STATEMENT OF ISSUE:

On April 14, 1983, R.D. McTaggart was employed out of Mimico, Ontario, as a locomotive engineer in work train service. On April 29, 1983, he submitted a time return for this tour of duty.

The circumstances connected with the submission of this particular time return was investigated. Consequently, Mr. McTaggart was suspended for 60 days for:

> Failure to properly submit a time return at Mimico, on April 14, 1983.

The Brotherhood subsequently appealed the extent of the discipline, contending that it was overly severe. A reduction of the discipline to a reprimand was requested with consequent compensation to Mr. McTaggart for all time held out of service.

The Company declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) P. M. MANDZIAK	(SGD.) D. C. FRALEIGH
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. B. Bart	– Labour Relations Officer, Montreal
D. W. Coughlin	– Manager Labour Relations, Montreal
J. A. Sebesta	– Coordinator Transportation, Montreal
E. A. Durham	– Trainmaster, Toronto

And on behalf of the Brotherhood:

P. M. Mandziak	– General Chairman, St. Thomas.

AWARD OF THE ARBITRATOR

There is no dispute that the grievor Locomotive Engineer, R.D. McTaggart, failed, as prescribed by article 92.1 of the collective agreement, to complete his time return for submission to the Company at the end of his run on April 14, 1983. Rather, he was approximately 15 days late in completing his return on April 29, 1983. For this infraction and the resultant administrative inconvenience caused the Company by the delay, the grievor was suspended for a two month period. It is common ground that the Company had recourse to a two month suspension in order to forestall the grievor's termination (having regard to his prior accumulation of 50 demerit marks) had an appropriate number of demerit marks been assessed for the culminating incident.

The Trade Union does not contest the Company's finding that the grievor committed the alleged misconduct. It merely argues, in all the circumstances, that the penalty of a two month suspension, irrespective of the grievor's previous record, was simply too severe for the rather trivial and commonplace infraction that was committed.

I am inclined to agree with the Trade Union's position. I hold it fallaceous, despite the Company's magnanimous intentions, to justify the imposition of an otherwise inappropriate disciplinary penalty under the guise of forestalling a discharge had the appropriate number of demerit marks been assessed. To put the matter more succintly, had the Company discharged the grievor for the culminating incident, the Company may very well have been faced with the prospect at arbitration of the grievor's reinstatement accompanied by an exorbitant compensation bill to pay. In other words, whether the Company has recourse to demerit marks under "the Brown System" or the imposition of a long term suspension the ultimate penalty, having regard to all the circumstances, must be seen to measure the seriousness of the misconduct. In this case, the culminating incident, irrespective of the grievor's past record, simply did not warrant the severity of a two month suspension.

Unlike the case in **CROA 726**, the culminating incident, albeit exasperating to the Company's administrative employees, was not, relatively speaking, the same type of infraction as described in that case. The Company assured me that the grievor had not engaged in any fraud or otherwise had he attempted to profit from his misdeed. His belated submission of his time return, albeit unfortunate, was not the type of heinous derilection that would warrant the discipline that was imposed. In short, I hold, having regard to all the circumstances inclusive of the grievor's mediocre record, that a suspension of two weeks duration ought to have sufficed.

Accordingly, the Company is directed to compensate the grievor for monies lost beyond the appropriate period of the suspension. I shall remain seized.

(signed) DAVID H. KATES
ARBITRATOR