

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 449

Heard at Montreal, Tuesday, June 11th, 1974

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Conductor T. Rioux was dismissed for accumulation of 60 demerit marks.

JOINT STATEMENT OF ISSUE:

On July 6, 1973, Conductor T. Rioux was dismissed for an accumulation of 60 demerit marks.

The Union contends that the 15 demerit marks assessed to Mr. Rioux are too severe for the accident in which he was involved on June 18th, 1973.

The Union filed a grievance. The Railway rejected it.

FOR THE EMPLOYEES:

(SGD.) J. H. BOURCIER
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) F. LeBLANC
SUPERVISOR - LABOUR
RELATIONS

There appeared on behalf of the Company:

J.	Bazin	Counsel
F.	LeBlanc	Supervisor - Labour Relations, Q.N.S. & L.Rly., Sept-11es
R. P.	Morris	Trainmaster, Q.N.S. & L. Rly., Sept-11es
N.	West	Trainmaster, Q.N.S. & L. Rly., Sept-11es
T.	Leger	Assistant - Labour Relations, Q.N.S. & L. Rly., Sept-11es
C.	Nobert	Assistant - Labour Relations, Q.N.S. & L. Rly., Sept-11es

And on behalf of the Brotherhood.

J. H. Bourcier - General Chairman, U.T.U.(T) --- Sept-11es

AWARD OF THE ARBITRATOR

On June 18, 1973, the grievor was conductor of Work Extra 235, with

an engineman and two brakemen. He had instructions to pick up two cars from the backtrack at Mile 62. At Mile 62, he instructed the engineman to pick up the two cars, relying on him to relay instructions to the brakeman. The move was thus left to the one brakeman to carry out. The conductor himself remained with the train on the passing track in order, as he said, to make sure the handbrakes were on. This duty was also given to the rear-end brakeman. While in view of the inexperience of the rear-end brakeman (who stated at his investigation that he was "beginning to understand" the Uniform Code of Operating rules), the conductor might have wished to assure himself that this job was done properly, exactly the same reasoning should have led him to exercise proper control over the pick-up move, for which he gave rather vague directions. The front-end brakeman, too, was inexperienced. While the lack of experience of the brakemen was suggested by the Union to be a reason for imposing a lighter penalty on the grievor, it is my view that the opposite conclusion follows. Because the brakemen were inexperienced, it was his duty to be particularly careful to explain precisely what they must do to ensure the proper control of cars during the move. In fact, whether it was partly due to the earlier negligence of other employees or not, certain of the cars which had been standing on the backtrack began to move down the gradient when the separation was made. They collided with a group of boarding cars standing further down on the backtrack causing personal injury as well as property damage.

In this case, it is clear that the conductor failed to give proper instructions and to satisfy himself that the operation was being conducted in a safe manner. The case may be contrasted with Case No. 450, where the conductor, although perhaps subject to criticism for the general move being made, could not have been expected to foresee that the engineman might move the train without any signal. In the instant case, the conductor should certainly have realized the risks that he created in arranging for this move with insufficient instruction and virtually no supervision. It is a case in which responsibility is properly attributed to him. The assessment of fifteen demerit marks was not excessive.

At the time of the incident, and even at the time the penalty was assessed (July 6, 1974), the grievor's disciplinary record showed forty-five demerit marks. With the addition of fifteen demerits for the incident in question, the grievor had accumulated sixty demerits and was subject to discharge. The forty-five demerits had been assessed on January 9, 1973, so that there had not been, at any material time, a period of six months free of discipline which would have resulted in the deduction of five demerits from the record. The grievor was not prejudiced by any delay in investigation of the matter.

For the reasons set out in Case No. 448, the record itself cannot be called in question in these proceedings. Whether or not the demerit assessed in January, 1973, were excessive or not was a matter which might have been taken through the grievance procedure at that time, but the record must now be taken as established.

Since, as I find, the grievor was properly assessed fifteen demerits in respect of the incident in question, and since he thereby

accumulated a total of sixty demerit points, he was subject to discharge under the system of discipline in force on the railroad. Just cause for discharge has been established, and the grievance must therefore be dismissed.

J. F. W. WEATHERILL
ARBITRATOR