CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1108

Heard at Montreal, Wednesday, June 15, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of discipline assessed Locomotive Engineer W. Urbanski, Toronto, July 30, 1982.

JOINT STATEMENT OF ISSUE:

On July 30, 1982, Mr. W. Urbanski was employed as in-charge Locomotive Engineer on VIA passenger train No. 45 operating from Ottawa to Toronto. On arrival of train No. 45 at Union Station, Toronto, passengers were detrained and the LRC equipment of train No. 45 proceeded to Willowbrook, with 2nd Locomotive Engineer F. Rumak at the controls. In the vicinity of Spadina Bridge the movement collided with the van of a stationary CPR transfer movement.

Following an investigation, Locomotive Engineer W. Urbanski was assessed 45 demerit marks for:

> "Violation of Uniform Code of Operating Rule 105, resulting in LRC equipment movement colliding with rear of CP Rail Circle Transfer stopped at Stop Board Track C-1, Mileage 0.8, Oakville Subdivision, 30 July 1982. Violation item 3.4, General Operating Instructions CN Form 696, U.C.0. General Rule "F" and failure to properly fill out Form 538D."

As a result, Locomotive Engineer Urbanski was discharged for accumulation of demerit marks effective September 3, 1982.

The Union appealed the assessment of 45 demerit marks, and the resultant discharge on the grounds that the discipline was too severe.

The Company declined the appeal.

FOR THE BROTHERHOOD:

(SGD.) P. M. MANDZIAK
General Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Assistant Vice-President
Labour Relations.

There appeared on behalf of the Company:

H. J. Koberinski - Manager Labour Relations, CNR, Montreal
G. C. Blundell - System Labour Relations Officer, CNR, Montreal
K. A. Hepburn - Asst. Superintendent, Lakeshore Division, CNR, Toronto
J. A. Sebesta - Coordinator Special Projects - Transportation, CNR, Montreal

And on behalf of the Brotherhood:

P. M. Mandziak - General Chairman, BLE, St. Thomas
W. Slowleigh - Local Chairman, BLE, Toronto
W. Urbanski - Grievor, Toronto

AWARD OF THE ARBITRATOR

The several violations of the rules with which the grievor is charged all occurred, or are alleged to have occurred, in connection with the collision which occurred after the passengers had detrained and the equipment was en route through the yard to the Willowbank maintenance facility. While the grievor was not at the controls, he was in charge of the engine, and would of course be responsible for reporting.

There are said to be four violations for which the grievor was subject to discipline. The first of these relates to Rule 105, which required the grievor to proceed at "restricted speed". The evidence suggests that while the movement departed Union Station at 10 - 12 m.p.h., it was travelling at about 10 m.p.h. when the CPR transfer was seen, and at about 4 - 5 m.p.h. at the time of impact. There were, it is said, no lights in the van of the CPR transfer. The grievor had not been advised of the presence of such a movement on the track in front of him. The mere fact of such an accident suggests that there was almost necessarily a violation of Rule 105. In the instant case, the grievor acknowledged that the movement was travelling too fast for the conditions in the area. It was not, in my view, a flagrant violation, and while discipline was proper, a very severe penalty would not be.

The second offence was the failure to make an emergency call, as required by section 3.4 of the General Operating Instructions, "where a train or movement is stopping as a result of an emergency application of the brakes". It would not appear that there was time for such a call to be made before impact. After impact, the grievor satisfied himself that no one was injured and that there had been no substantial damage. Certainly (as will be seen below), the matter of reporting of such events is an important one. In the circumstances of this particular case, however, any real emergency was over by the time a call could have been made. The grievor is responsible for a breach of this rule, but again no very substantial penalty was called for in the circumstances.

The third violation is that of General Rule F of the Uniform Code of Operating Rules. That Article is as follows:

> "F. Accidents, failure in the supply of water of fuel, defects in track, bridges,

> signals, block indicators, or any unusual condition which may affect the movement of trains, must be promptly reported by the quickest available means of communication to the proper authority. In case of injury to persons the names and addresses of as many witnesses as possible must be obtained."

This violation may be considered together with the fourth, that of failure to fill out the Engineman's Report, form 538D. The grievor did not report the matter at all. In fact, the Company did become aware that an accident had occurred. Knowing that, the grievor may have thoughtno report was necessary, although in his statement he says that he forgot. He did not report it promptly "because I had an agreement with the CPR that the incident would be forgotten". In fact, there were certain personal injuries, apparently of a minor nature. In any event it was the grievor's clear duty to make a report, first to the dispatcher, and later in written form. Such reports serve differen purposes, and both are necessary, one for the immediate control of operations, the other for the proper evaluation of events (with all the possibilitles that implies) and the proper maintenance of equipment. While the grievor seems to have hoped the incident would go unnoticed, I do not think it could properly be said that he took positive steps to "cover up" what had taken place. There was, again, a violation of the rules, and in this respect a substantial penalty would be appropriate.

At the time of the incident, the grievor's record stood at 10 demerits. The Union contended that those demerits, dated January 2, 1982, ought not to have been imposed. They do not appear to have been the subject of any grievance, however, and they stand on the record. Those circumstances may not be called in question now.

Subsequent to this incident, the grievor was assessed 20 demerits in respect of an incident which had occurred on July 26, 1982. That incident is not in issue here, but it may be noted that while the assessment of 20 demerits brought the total on the record to 30, the grievor was not aware of that at the time of the incident in question here.

The grievor is an employee of some thirty years' service. He would appear to have had a clear record at the outset of 1982. In these circumstances I think that it is proper, in assessing the imposition of discipline in terms of demerit points, to bear in mind the practical result, that is to say, the discharge of the employee. The question is whether or not that result is justified in the light of the particular offence, the employee's discipline record, and any other factors that may properly bear on the matter.

In the instant case the grievor was clearly subject to discipline, and indeed to substantial discipline. While there were a number of rule violations, they all related to the same incident, although to different aspects thereof. The twenty demerits (relating to an improper signal interpretation) had not been assessed, and might still hav been subject to grievance. Bearing all these factors in mind, it is my view that just cause for discharge has not been made out, but that while the number of demerits assessed should be

reduced, there should be no award of compensation.

It was argued for the Union that the discipline imposed was not valid because it was not imposed within the time limits set out in the Collective Agreement. That issue, however, is not referred to in the Joint Statement, and by Clause 12 of the Memorandum establishing the Canadian Railway Office of Arbitration, is not properly before me. Further the material before me indicates that an extension of time limits was granted, and that the discipline was imposed within the extended time. In any event, it is my view that the Collective Agreement time limits run from the completion of the investigation process - which was not unreasonably protracted - and that the discipline was imposed within the time limits.

For the foregoing reasons, it is my award that the grievor be reinstated in employment forthwith, without loss of seniority but without compensation for loss of' earnings or other benefits, and that his discipline record stand at 55 demerits, assessed as of the date of his reinstatement.

J. F. W. WEATHERILL,
ARBITRATOR.