CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1110

Heard at Montreal, Thursday, June 16, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

(CN RAIL DIVISION)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of 45 demerit marks assessed the record of Locomotive Engineer H. J. Gibson of Sarnia, Ontario.

JOINT STATEMENT OF ISSUE:

On May 6, 1981, Mr. H. J. Gibson was employed as Locomotive Engineer on Train No. 410 (Extra 9434 East), Sarnia to Toronto. At approximately mileage 32.4, Dundas Subdivision, Train No. 410 derailed while entering the south siding at Paris West.

An investigation was conducted and Locomotive Engineer Gibson's record was assessed with 45 demerits for failure to take the necessary emergency action and failure to comply with the requirements of instructions 17.1, 12, General Operating Instructions, Form 696, Rule 108, U.C.0.R. and Rule 297B, page 183, Great Lakes Region Timetable No. 42 resulting in the derailment of Extra 9434 East.

The Brotherhood appealed the discipline on the grounds that:

(a) the investigation was not conducted in accordance with the Letter of Understanding of May 30, 1977 and the Memorandum of Agreement of November 30, 1978 (Trial Project on Discipline); and

(b) in any event, the discipline issued was too severe.

The Company declined the Brotherhood's appeal.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) P. M. MANDZIAK	(SGD) M. DELGRECO
General Chairman	FOR: Assistant Vice-President Labour Relations

There appeared on behalf of the Company:

H. J. Koberinski	- Manager Labour Relations, CNR, Montreal
M. Delgreco	- Senior Manager, Labour Relations, CNR, Montreal
D. G. Wallace	- Asst. Superintendent, CNR, Hamilton

P. J. O'Halloran	- Signal Supervisor, CNR, London
C. B. Gingerich	- Chief Dispatcher, CNR, London
G. C. Blundell	- System Labour Relations Officer, CNR, Montreal
J. A. Sebesta	- Coordinator Special Projects - Transportation - CNR, Montreal
J. Defoe	- Regional Master Mechanic, CNR, Toronto

And on behalf of the Brotherhood:

P. M. Mandziak	- General Chairman, BLE, St. Thomas
J. Pickle	- Local Chairman, 240, BLE, Sarnia

AWARD OF THE ARBITRATOR

Essentially, the offences with which the grievor is charged relate to his taking his train into a siding on the south side of the main line at Paris West at speeds well in excess of those imposed by the General Operating Instructions, the Uniform Code of Operating Rules and, in particular, the signal indications.

The grievor passed a "clear to stop" signal at mileage 35.6, but appears to have taken no step to be prepared to stop at the next signal. He passed a restricted speed signal at Mileage 32.7. Although that signal required a speed not greater than 15 m.p.h., the grievor was travelling at a speed variously estimated at between 35 and 55 m.p.h., and was probably closer to the higher speed. He entered the siding shortly after that, and a major derailment occurred. The grievor's train consisted of three locomotives forty-four loaded cars (including dangerous commodities) and thirty-eight empties. Some thirty-one cars derailed. There was very substantial damage to equipment and track although, fortunately, no injuries.

While other members of the train crew would have a responsibility for what occurred, the grievor's failure to perform his own tasks properly is clear. There has not been shown to have been any equipment failure or other circumstance which might be thought to relieve him of responsibility. The grievor was clearly subject to severe discipline in respect of this incident.

It was contended for the Union that the investigation of this matter was not in accordance with the requirements of the parties' agreement in respect of investigations and discipline. In my view, however, the investigation was properly carried out. It was conducted very fairly by an experienced and qualified investigating officer. Many questions were put by the grievor's representative, and a number of these were held by the investigating officer to be irrelevant. Rulings of that sort are contemplated by the agreement. The questions not allowed were recorded, as the agreement requires. The agreement does not require the recording of answers to questions ruled irrelevant: in most instances, presumably, there will be no answers to such questions. While the correctness of some of the rulings (there were many) may be debatable, there is nothing to establis that the Union was in fact prevented from dealing properly

with the case, or from putting forward any appropriate defence. There is, indeed, little if any dispute as to the facts. There was some mention of possible flaws in the braking system, but nothing of significance had appeared prior to the derailment, and the grievor had not then indicated any concern of that sort.

Shortly after the derailment, the Master Mechanic questioned the grievor as to what had occurred, and his report was put in at the investigation. The Master Mechanic's inquiry at the time was not the same as the formal investigation contemplated by the parties' agreement with respect to investigation and discipline. That agreement does not prevent the Company from taking immediate steps with respect to any accident, or from informing itself as promptly as it can as to its cause. The Master Mechanic would of course be subject to questioning at the investigation, and that was done.

In my view that matter was properly and fairly investigated. The grievor's responsibility was clearly established, and the grievor was properly subject to discipline.

Given the seriousness of the offence, it is my view that forty-five demerits was an appropriate penalty. The assessment of forty-five demerits led to the grievor's discharge for accumulation of demerits. That matter, however, will be dealt with in Case No. 1111 which deals with discipline imposed in respect of an incident which occurred some three weeks after the incident in question.

For the foregoing reasons the grievance as to the assessment of forty-five demerits is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.