

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1111

Heard at Montreal, Thursday, June 16, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY  
(CN Rail Division)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of 30 demerit marks assessed the record of Locomotive Engineer H. J. Gibson of Sarnia, Ontario and subsequent discharge due to accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

On May 27, 1981 Mr. H. J. Gibson was employed as Locomotive Engineer on Train No. B-411 (Extra 9454 West), MacMillan Yard to Sarnia. At approximately mileage 68.5 on the Dundas Subdivision, Train No. B-411 committed a violation of U.C.O.R. 42, Form Y.

An investigation was conducted and Locomotive Engineer Gibson's record was assessed with 30 demerit marks for failure to fulfil the requirements of Train Order No. 899 resulting in violation of U.C.O.R. 42 at Mileage 68.5, Dundas Sub., and failure to fulfil the requirements of U.C.O.R. General Rule No. E while working as Locomotive Engineer on Extra 9454 West, 27 May 1981. Locomotive Engineer Gibson was subsequently advised of this assessment and another assessment relating to an earlier incident of May 6, 1981 (45 demerit marks assessed on June 9, 1981). Another investigation was held wherein Locomotive Engineer Gibson was advised that he was being discharged effective June 15, 1981, for an accumulation of demerit marks.

The Brotherhood appealed the discipline on the grounds that:

- (a) the discipline issued for the incident of May 27, 1981 was too severe; and
- (b) in any event the cumulative discipline and resulting discharge was too severe given the grievor's record with the Company.

The Company declined the Brotherhood's 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
M. Delgreco	- Senior Manager, Labour Relations, CNR, Montreal
J. A. Sebesta	- Coordinator Special Projects - Transportation, CNR, Montreal
G. C. Blundell	- System Labour Relations Officer, CNR, Montreal

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

Three weeks after the grievor had been involved in the very serious derailment described in Case No. 1110, he was involved in a violation of Rule 42 of the Uniform Code of Operating Rules, in that he proceeded beyond the signals described without instructions from the Foreman mentioned in the train order.

There is no doubt that the offence occurred, and that the grievor was subject to discipline on that account.

While the offence, considered in itself, is a serious one and might in many cases call for the assessment of thirty demerits I do not consider that there was just cause for the assessment of that penalty in this case. I come to that conclusion having regard to the particular circumstances of this case, and especially of the grievor's own assignment to work. The grievor had only recently returned to service having been held out of service (quite properly) in connection with the derailment which occurred on May 6. The Union had, it is said, asked that he be restricted to yard service. He was, however, assigned to freight service. The head-end Brakeman assigned for his run was one whose work had mostly been in yard service. The train order, which the grievor did not follow, was one of many train orders the grievor had received in connection with his run. It would not have applied to the grievor's trip, had it not been for a subsequent train order which required the train to operate on other track, to which the order, which was not re-issued, did apply.

In these circumstances, it would be my view that the penalty imposed was excessive. In any event, however, since the imposition of this penalty led to the grievor's discharge, that fact, as earlier cases have held, may be borne in mind in determining the appropriateness of the penalty. The grievor is an employee of over thirty years' service. His record, prior to May, 1981, was clear, and would appear to have been generally good in the past. The incidents of May 6th and May 27th were both very serious, and indeed call in question the grievor's competence for main line service. Although the accumulation of demerits indicates the possibility of discharge,

where that result is not a necessary one, and where the demerits have been accumulated in a short period of time and are uncharacteristic of an employee's record, regard may properly be had to the employee's length of service.

In the instant case, having regard to the foregoing considerations, it is my view that there was not just cause for the discharge of the grievor. In all of the circumstances, 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, that he be restricted to yard service, and that his discipline record stand at fifty-five demerits as of the date of his reinstatement.

J. F. W. WEATHERILL,  
ARBITRATOR.