

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1219

Heard at Montreal, Thursday, March 8, 1984  
Concerning

CANADIAN NATIONAL RAILWAY COMPANY  
(CN Rail Division)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of 10 demerit marks assessed the record of Yard Foreman E. P. Weston of Sarnia, Ontario.

JOINT STATEMENT OF ISSUE:

On November 2, 1981, Mr. E. P. Weston sustained a personal injury during his tour of duty as Yard Foreman.

Following an investigation, Yard Foreman E. P. Weston was assessed 10 demerit marks, effective November 2, 1981 for:

"Violation of U.C.O.R. General Rule M  
resulting in personal injury, Sarnia Yard."

The Union appealed the assessment of 10 demerit marks on the grounds that it was unjustified.

The Company declined the appeal.

FOR THE UNION:

(SGD. W. G. SCARROW  
General Chairman

FOR THE COMPANY:

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

There appeared on behalf of the Company:

D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
G. C. Blundell	- System Labour Relations Officer, CNR, Montreal
W. P. Byers	- Asst. Superintendent, CNR, Sarnia
R. B. Jameson	- Trainmaster, Toronto Union Station, CNR, Toronto

And on behalf of the Union:

W. G. Scarrow	- General Chairman, UTU, Toronto
R. A. Bennett	- General Chairman, UTU, Toronto

AWARD OF THE ARBITRATOR

On November 2, 1981, the grievor, Yard Foreman E. P. Weston, while in the course of performing his duties at the Utility Yard in Sarnia, Ontario, twisted his back in attempting to handle the operating lever on car UTLX 81531. As a result he aggravated a chronic back condition that originated with an injury he incurred in 1977. Following the injury the grievor was taken off his regular assignment and assigned light duties for several days. Mr. Weston was assessed 10 demerit marks for his alleged violation of UCOR General Rule "M" which reads as follows:

"M. Employees must exercise care to avoid injury to themselves or others. They must observe the condition of equipment and the tools which they use in performing their duties and when found defective will, if practicable, put them in safe condition, reporting defects to the proper authority.

They must not ride on top or sides of cars or engines passing structures or obstructions at any point at which there is restricted overhead or side clearance and must inform themselves respecting the location of such.

They must expect the movement of trains, engines or cars at any time, on any track, in either direction.

They must not stand on the track in front of an approaching engine or car for the purpose of boarding same.

They must be familiar with and be governed by the Company's safety rules and instructions."

Much discussion was made at the hearing as to whether Mr. Weston's approach to handling the lever at the time of his injury was in accordance with common practice. Nonetheless it appears that pursuant to the "informal" investigation conducted by Trainmaster R. B. Jameson into the cause of the injury the grievor acknowledged in writing that he had adopted an improper and unsafe approach to handling the lever:

"I accept the conclusions reached by the Company, but may initiate an appeal of the discipline in accordance with the grievance procedure contained in my collective agreement."

Accordingly the sole issue raised herein is whether 10 demerit marks was an appropriate disciplinary response to the grievor's infraction of UCOR General Rule "M". In this regard the company has demonstrated a long record of previous incidents for which the grievor had been assessed demerit marks for injury-related infractions of UCOR General Rule "M". In the face of that record, I am not persuaded that the grievor was treated unduly with respect to his assessed penalty. Moreover, the trade union has not

demonstrated, by reference to an employee with a like record, that the grievor has been singled out or otherwise discriminated against with respect to discipline.

For the foregoing reasons the grievance is denied.

DAVID H. KATES,  
ARBITRATOR.