

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1223

Heard at Montreal, Tuesday, April 10, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN RAIL DIVISION)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of 20 demerit marks assessed the record of Yardman T. J. Causley, Sarnia, Ontario.

JOINT STATEMENT OF ISSUE:

Between January 1 and September 8, 1982, Yardman T. J. Causley, while employed at Sarnia, sustained five personal injuries.

Following an investigation, Yardman T. J. Causley was assessed 20 demerit marks effective September 8, 1982 for violation of General Rule "M" resulting in five personal injuries sustained while employed as a Yardman between January 1, 1982 and September 8, 1982.

The Union appealed the assessment of 20 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
J. A. Sebesta	- Co-ordinator Transportation - Special Projects, CNR, Montreal
J. H. Rousseau	- Trainmaster, CNR, Sarnia
R. D. Jameson	- Trainmaster, CNR, Toronto

And on behalf of the Union:

W. G. Scarrow	- General Chairman, UTU, Toronto
R. A. Bennett	- General Chairman, UTU, Toronto
J. M. Kelly	- Local Chairman, UTU, Sarnia

AWARD OF THE ARBITRATOR

Between January 27, 1982 and September 7, 1982, the grievor, Yardman T. J. Causley, is alleged by the company to have committed five infractions of General Rule "M" of the UCOR with respect to his obligation "to exercise care and avoid injury to himself and others.

Assuming but without necessarily finding that the grievor violated General Rule "M" as alleged, the company did not discipline the grievor for each alleged infraction. Rather, the grievor was assessed twenty demerit marks because he was allegedly an unsafe employee. No attempt was made to match the assessment of discipline with a particular infraction and to penalize the grievor for that infraction in light of his past record.

It is my appreciation of "the Brown System" that progressive discipline is to be imposed for each alleged incident of misconduct and the quantum of the penalty is to be determined in accordance with the seriousness of the alleged act or acts of misconduct in light of the employee's past record.

In my opinion "the Brown System" does not contemplate the accumulation of numerous alleged incidents of misconduct and their grouping together for the purpose of assessing one appropriate penalty.

In the result, since no discipline was imposed for the particular infractions alleged there has been no case put forward by the company that warranted the imposition of twenty demerit marks. The grievance therefore succeeds and the company is directed to expunge the grievor's record accordingly.

DAVID H. KATES,
ARBITRATOR.