

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1305

Heard at Montreal, Thursday, November 15, 1984
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 G. R. Stewart of Toronto.

JOINT STATEMENT OF ISSUE:

On May 27, 1983, Mr. G. R. Stewart was assigned as Locomotive Engineer on VIA Passenger Train No. 656 which departed Union Station, Toronto at 2017 hours, enroute to Kingston, without a clearance or train orders.

After travelling approximately 13 miles and upon approaching Guildwood Station, the train crew realized what had occurred and reported the incident.

Following an investigation, the record of Locomotive Engineer G. R. Stewart was assessed 45 demerit marks, effective May 27, 1983, for violation of Rules 83D, 210B, 210C, 211 Paragraphs 4 and 106 of the Uniform Code of Operating Rules.

The Brotherhood appealed the assessment of 45 demerit marks on the grounds that it was too severe.

The Company declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:

(SGD.) P. M. MA?DZIAK
General Chairman

FOR THE COMPANY:

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

There appeared on behalf of the Company:

J. B. Bart	- Labour Relations Officer, CNR, Montreal
D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
J. A. Sebesta	- Coordinator Transportation, CNR, Montreal
W. J. Rupert	- Manager Rules, CNR, Montreal
L. G. Finnerty	- System Master Mechanic, CNR, Montreal

And on behalf of the Brotherhood:

P. M. Mandziak - General Chairman, BLE, St. Thomas
G. N. Wynne - General Chairman, BLE, Montreal
G. Thibodeau - General Chairman, BLE, Quebec

AWARD OF THE ARBITRATOR

In this case the trade union does not contest that Locomotive Engineer Stewart committed a serious infraction of UCOR Rule 830 when on May 27, 1983 he departed Union Station, Toronto, on VIA passenger train No. 656 without obtaining the appropriate clearances. In so doing, there was also no dispute that the grievor was in violation of related UCOR Rules pertaining to the securing, checking and understanding of the train orders that might affect that passenger run.

The only issue that was contested was the reasonableness of the 45 demerit marks that was assessed the grievor for the various infractions that arose out of the one transaction.

The trade union suggested that 30 demerit marks ought to have been an adequate and reasonable response to the grievor's inadvertance in failing to comply with the UCOR Rules. Indeed, it was argued that 30 demerit marks should represent the standard for the first infraction of this nature having regard to the relatively "clean" record of a long service employee.

Although it may very well be that 30 demerit marks might well serve both the corrective and deterrent purposes designed by recourse to discipline for the violation of an important rule, it should also be noted that the grievor exacerbated his wrongdoing after he discovered his oversight. The evidence disclosed that Locomotive Engineer Stewart continued to operate his train for another two miles when he knew he had not been given the proper clearances. As the company's brief suggested the grievor thereby "persisted in this violation".

The real issue that was raised in this case is whether the company is acting justly in imposing the severe penalty of 45 demerit mark for an infraction of the UCOR Rules that all parties agree constitutes a serious offense. On the one hand, the company has a real concern in expressing the gravity of the grievor's misconduct through the medium of a disciplinary response. Short of discharge, the company has obviously concluded that 45 demerit marks will accomplish the required purpose.

On the other hand, the trade union's concern is for the grievor who is a long service employee with a relatively clean record. Its obvious objective is to protect his job security in the event that some subsequent menial or trivial act of misconduct could precipitate his discharge.

In short, what should be done to balance the competing and legitimate concerns of both parties?

It seems apparent that the employer's first duty is to operate its railway enterprise in an efficient, secure and safe manner so that the public that is served may have confidence in the service that is

provided. The company must therefore ensure compliance with the statutory rules and regulations that uphold the safety and security of the service. And, as an integral part of discharging that responsibility the employer must impress upon its employees, particularly when an infraction of those rules occur, that such inadvertance cannot be tolerated. Accordingly, a severe disciplinary penalty, in the absence of a reasonable excuse for the infraction constitutes an obvious and reasonable response And such responses to a first offence may be expressed by recourse to suspension, temporary demotion or, as in this case, the imposition of demerit marks. In my view so long as the employer's response is commensurate with the seriousness of the situation, an Arbitrator should be reluctant to interfere.

And, this brings me to the trade union's principal concern. The employer's duty in any subsequent act of misconduct by the same employee still remains the same. In the imposition of any penalty the often repeated considerations of the seriousness of the infraction, the length of service, the past record of the employee concerned must be weighed. And, of course, the employee's insurance policy against an abuse by the employer of its disciplinary powers are the powers of review that may be exercised during the arbitration process. In other words, any decision to discharge an employee must be preceded by a serious consideration of all the relevant factors. And, if the employer is shown to be remiss in discharging that responsibility such shortcomings will obviously be corrected.

In the circumstances of this case, I cannot find, on the admitted evidence, that the company has reacted unjustly or unreasonably to the grievor's serious breach of the UCOR Rules. His grievance is therefore dismissed.

DAVID H. KATES
ARBITRATOR.