

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1312

Heard in Montreal, Wednesday, December 12, 1984.

Concerning

CANADIAN NATIONAL RAILWAYS
(CN Rail Division)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed the record of Yard Helper L. C. Shaw, Sarnia, 28 September 1983.

JOINT STATEMENT OF ISSUE:

On 28 September 1983, Mr. L. C. Shaw was employed as Yard Helper on the 0630 Eastbound yard assignment in Sarnia Yard.

During switching operations, the 0630 Eastbound yard assignment was involved in a side collision and derailment.

Following an investigation, the record of Yard Helper L. C. Shaw was assessed 20 demerit marks, effective 28 September 1983, for violation of Rule 112, paragraph 4, and Rule 103, paragraph 1, of the Uniform Code of Operating Rules.

The Union appealed the discipline on the grounds it was too severe.

The Company declined the appeal.

FOR THE UNION:

(SGD.) W. G. SCARROW
General Chairman

FOR THE COMPANY:

(SGD.) M. DELGRECO
FOR: Assistant
Vice-President
Labour Relations.

There appeared on behalf of the Company:

J.B. Bart - CN Labour Relations Officer, Montreal.
D.W. Coughlin - CN Manager Labour Relations, Montreal.
J.A. Sebesta - CN Coordinator Transportation, Montreal.
L.G. Lisle - CN Trainmaster, Sarnia.

And on behalf of the Union:

W.G. Scarrow - General Chairman, Sarnia, UTU
J.M. Kelly - Local Chairman, Sarnia, UTU.

AWARD OF THE ARBITRATOR

The sole issue in this case is whether the twenty demerit marks assessed Yard Helper L.C. Shaw was an appropriate disciplinary response to the grievor's alleged infraction in "overloading" Track B-3 with rail cars. There is no dispute that the excess number of cars placed on Track B-3 resulted in a derailment and a collision with other oil tankers in the yard that could have had serious consequences.

Without belabouring the point the Company insists that the grievor's responsibility for adherence to Rule 103, paragraph 1, and Rule 112, paragraph 2 in the performance of his duties allowed for no mitigating circumstance. He was directly obliged, notwithstanding the prevailing weather conditions, to conform strictly to the requirements of the UCOR Rules. And, had such strict adherence been made the grievor would have known, as he agreed he did not know, that seven cars were parked on Track B-3 at the time the "overloading" took place.

The Company conceded that there may very well have been an error in the computer print-out indicating at the relevant time that Track B-3 was clear. Nonetheless the company still maintained that this did not exonerate the grievor from fault in his failure to adhere to the UCOR Rules. In this regard, Yardmaster D.L. MacLaughlan confirmed that he had wrongly told Yard Foreman Weston (the grievor's foreman) that Track B-3 was clear.

In dealing with the appropriateness of the twenty demerit mark penalty, I am satisfied that the error communicated to the grievor's foreman should have had a mitigating influence on the severity of the disciplinary penalty. Although I quite agree with the Company that the misinformation contained in the computer print-out did not release the grievor from his responsibility for adherence to the relevant UCOR Rules, nonetheless the incident was rooted directly in the erroneous and misleading clearance of Track B-3. This admitted shortcoming cannot be attributed to the grievor or his foreman. As a result, it is a consideration that should have been weighed by the Company in assessing the disciplinary result.

Although I am prevented by the grievor's mediocre personal record from substituting a mere reprimand for his infraction (as argued by the trade union), I am satisfied that a penalty of ten (10) demerit marks is appropriate in all the circumstances. Accordingly, the company is directed to make the appropriate revision to the grievor's record. I shall remain seized.

DAVID H. KATES
ARBITRATOR.