

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1428

Heard at Montreal, Tuesday, November 12, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed the record of Brakeman W. J. Leese, London, Ontario, effective July 11, 1983.

JOINT STATEMENT OF ISSUES:

On July 11, 1983, Mr. Leese was employed as Brakeman on Work Extra 4504 operating on the Strathroy Subdivision. After leaving Komoka, Work Extra 4504 was operated on the westward track between Mileage 9.8 and Mileage 20 on the Strathroy Subdivision without authority.

Following an investigation, the record of Brakeman Leese was assessed 40 demerit marks, effective July 11, 1983 for:

"Failure to fully comply with the requirements of U.C.O.R. 210C, 97 Paragraph 2, General Rules "L" and "F" and Footnote 1.1, page 56 Great Lakes Region Timetable No. 47 resulting in Work Extra 4504 operating on the westward track of the Strathroy Subdivision between Komoka and Strathroy without proper authority on 11 July 1983."

As a result, Brakeman Leese was discharged, effective July 13, 1983 for accumulation of 85 demerit marks on his record.

The Union appealed the discipline assessed and the resultant discharge of Brakeman Leese on the grounds that it was too severe.

The Company declined the appeal.

FOR THE UNION:

(SGL.) R. A. BENNETT
General Chairman

FOR THE COMPANY:

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

There appeared on behalf of the Company:

J. B. Bart	- Syster Labour Relations Officer, CNR, Montreal
D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
J. A. Sebesta	- Coordinator Transportation, CNR, Montreal
W. J. Rupert	- System Manager, Rules, CNR, Montreal

And on behalf of the Union:

R. A. Bennett	- General Chairman, UTU, Toronto
B. Coughlan	- Local Chairman, Local 403, UTU, Belleville
G. Dumas	- Local Chairman, Local 1872, UTU, Montreal
W. J. Leese	- Grievor, London

AWARD OF THE ARBITRATOR

The culminating incident resulting in the grievor's discharge pertained to the committal of his cardinal sin of failing to read, understand and remember the train crew's clearance order. The initial infraction took place when the train did not stop at Komoka, Ontario to obtain its clearance to proceed to Strathroy via the eastern track. That infraction was compounded after the second train clearance was secured and the train proceeded to Strathroy on the western track. The trade union conceded the serious nature of the train crew's infraction and the grievor's breach of responsibility with respect thereto. Indeed, it was only because of fortuitous circumstances that a catastrophe of a head-on collision with a VIA passenger train was avoided.

Each member of the train crew was assessed a severe penalty for his admitted infraction. Because of the grievor's accumulated total at the time of the infraction, his forty demerit marks made discharge the inevitable disciplinary penalty. In that regard, the grievor had hitherto accumulated a total of 45 demerit marks as a result of four separate incidents.

The grievor is a relatively new employee with four years cumulative seniority. He is married with two children. Since his discharge he has been able to secure employment elsewhere.

The trade union argued that extenuating circumstances attributable to the grievor's inexperience ought to convince me to reduce the discharge penalty. It was pointed out that during the grievor's short career with the railway he has been on lay off for one half his stay.

Moreover, it was pointed out that, although the grievor's breach could not be condoned, the failure of the operator and signalman at the Komoka Station to perform their duties in warning the crew of its error and in switching the track to allow for the crossover to the eastern track contributed to the incident. The trade union, once it heard the company's reply, did not pursue this argument as a credible mitigating circumstance.

The truth of the matter is that the grievor, a relatively short term employee, omitted to perform a fundamental task in the performance of his duties. He is trained as a conductor and should have known better.

In having regard to the arbitral precedents adduced in the company's brief, I cannot fault the employer for the 40 demerit marks that were assessed for the grievor's misconduct. Nor am I empowered to reverse the unchallenged disciplinary penalties that have preceded the

culminating incident.

Since the employer has established "just cause" for discharge I am compelled to reject Mr. Leese's grievance.

DAVID H. KATES,
ARBITRATOR.