

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1582

Heard at Montreal, Wednesday, November 12, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed the record of Conductor R. J. Gordon, Niagara Falls, Ontario, effective November 9, 1985 and his consequent discharge due to accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

On November 9, 1985, R. J. Gordon worked as Conductor in charge of Train 564, a road switcher operating out of Port Robinson, Ontario

One of the tasks assigned to Train 564 on that date was the switching of Ennis Steel. When it was learned that this work had not been performed, an investigation was conducted following which the record of Conductor Gordon was assessed 15 demerit marks for:

Failure to properly perform the duties of Conductor while employed as Conductor on Train 564 on November 9, 1985 at Port Robinson, Ontario, which resulted in failure to properly perform switching service at a private industry.

This assessment, coupled with his past record, resulted in Conductor Gordon's discharge for accumulation of sixty or more demerit marks

The Union appealed the matter on the grounds that Conductor Gordon was not afforded a fair and impartial hearing; that the time limits for the assessment of discipline were violated; that the discipline was unwarranted; and that discharge was too severe.

The Company declined the Union's appeal.

FOR THE UNION:

(SGD.) R. A. BENNETT  
General Chairman

FOR THE COMPANY:

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

There appeared on behalf of the Company:

D. W. Coughlin - Manager Labour Relations, CNR, Montreal  
J. Bart - System Labour Relations Officer, CNR, Montreal  
M. C. Darby - Coordinator Transportation, CNR, Montreal

P. G. Drew - Assistant Superintendent, CNR, Hamilton  
B. J. Mahoney - Transportation Officer, CNR, Toronto

And on behalf of the Union:

T. G. Hodges - Vice-General Chairman, UTU, Toronto  
M. P. Gregotski - Local Chairman, UTU, Niagara Falls

#### AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that when it was time to move the rail cars in question to the Ennis Steel Company, Mr. Gordon was told by the Locomotive Engineer that he had other things to do, that he wanted to tie up and go home and that another train crew, coming to work some two hours later, could do the work. The grievor, who had ultimate responsibility for the train, agreed. Consequently the Company's customer suffered a substantial delay in delivery, causing it an additional cost in lost overtime which had been scheduled in anticipation of a timely delivery of the rail cars.

Conductor Gordon is plainly aware that he failed in his responsibility. During the course of the investigation, when asked whether he agreed with Engineman Davidson's proposal he responded that he knew that the work should be done but that "he prevailed on me and I reluctantly agreed to putting the train away in the team track and we did not switch Ennis Steel".

In the circumstances the Arbitrator can see no basis to overturn the imposition of 15 demerit marks on the grievor. In view of his record as it stood at the time of the imposition of this discipline, Conductor Gordon was discharged from service. As a result of the decision in CROA Case #1581, however, an earlier suspension against the grievor has been rescinded with the consequent reduction of his demerit marks to 30 as at the date of the instant discipline. In these circumstances his termination cannot stand. The grievor's record, however, is extremely negative. In CROA Case #1000, a prior discharge of the grievor was reduced to a reinstatement, albeit the Arbitrator found him to be deserving some discipline. In the instant case his egregious disregard of his duty might well have attracted the imposition of a further 30 demerit marks, particularly in light of his prior record. In these circumstances the Arbitrator deems it appropriate that the grievor be reinstated without any compensation, and without any loss of seniority. I retain jurisdiction should any issue arise respecting the implementation of this award.

MICHEL G. PICHER,  
ARBITRATOR.