CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1592

Heard at Montreal, Wednesday, December 10, 1986

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Prairie Region)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed the records of Trainman R. D. Sinclair and Engineer/Trainee P. A. Booth, Moose Jaw, and their subsequent discharge due to an accumulation of demerit marks in excess of sixty.

JOINT STATEMENT OF ISSUE:

Messrs. Booth and Sinclair were the Engineer/Trainee and head-end Trainman respectively on a westbound train on the Indian Head Subdivision on January 10, 1986. They passed a yellow flag which was not covered by a train slow order and did not stop after having done so.

Following an investigation into this matter, both men were assessed 40 demerit marks for failing to regard a signal improperly displayed as the most restrictive indication that could be given by that signal; a violation of Uniform Code of Operating Rule 27.

As a result of this assessment, both men were discharged for an accumulation of demerit marks in excess of sixty.

The Union appealed the matter on the grounds that the discipline was assessed unfairly and, in any case, this assessment and the resultant discharge was too severe.

The Company declined the Union's appeal stating that the discipline was neither unwarranted nor excessive.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) J. H. McLEOD General Chairman	(SGD.) E. S. CAVANAUGH General Manager, Operation and Maintenance

There appeared on behalf of the Company:

G. W. McBurney	- Asst. Supervisor Labour Relations, CPR, Winnipeg
D. A. Lypka	- Supervisor, Labour Relations, CPR, Winnipeg
B. P. Scott	- Labour Relations Officer, CPR, Montreal
G. H. Veillux	- Manager Training & Time Service, CPR, Montreal

And on behalf of the Union:

L. O. Schillaci - Vice-General Chairman, UTU, Calgary
J. H. McLeod - General Chairman, UTU, Calgary
W. M. Jessop - Secretary, UTU, Calgary

AWARD OF THE ARBITRATOR

The Union does not deny that the grievors failed to observe Rule 27 of the Uniform Code of Operating Rules, and that theirs was a serious error deserving of discipline. The sole issue is the appropriate measure of discipline in each of their cases.

With the assessment of 40 demerit marks, Grievor Sinclair stands at 75 demerits on the Brown System, 60 demerits being the measure to justify dismissal. While Mr. Sinclair is a long service employee, his disciplinary record is not impressive. Prior to the incident of January 10, 1986 he was repeatedly assessed demerit marks for a number of serious rules infractions in relation to train movement incidents. As a result of a particularly serious incident on January 21, 1983, which caused extensive damage to equipment, he was assessed 30 demerits and dismissed for an accumulation of 60 demerit marks. Subsequently, in November 1983 he was reinstated by the agreement of the parties with 50 demerit marks on his record. In March 9, 1984 he was again assessed 5 demerits for a rules violation. With the passage of twelve months without demerits his marks were reduced to 35 in March of 1985. The events of January 10, 1986 and the imposition of a further 40 demerit marks again placed the grievor in a position of vulnerability to dismissal.

The Arbitrator must agree with the Union's representative who notes that Mr. Sinclair's unfortunate circumstances are due in substantial part to the fact that he returned to service in November, 1983 with 50 demerit marks against him. It is also true, however, that he returned to work willing to accept that damoclean sword, fully aware that any recurrence of a serious disciplinary infraction could have the gravest consequences. Upon a close review of the grievor's record, the Arbitrator must have serious concern for the limited value which progressive discipline has apparently had in Mr. Sinclair's case. By virtue of the agreement of November 1983, Mr. Sinclair was given a second chance. In all of the circumstances the Arbitrator cannot conclude that the Company's disciplinary response to the incident of January 10, 1986 was not appropriate. The grievance of Mr. Sinclair must therefore be dismissed.

Mr. Booth's record stood at 45 demerits prior to the incident of January 10, 1986. At least two prior incidents also involved violations of the Uniform Code of Operating Rules. There is little basis to find that the Company has been unfair or discriminatory in the treatment of Mr. Booth. It is common ground that the Dispatcher responsible for the original error was restricted from working as a Dispatcher, the Roadmaster involved was demoted, and the Engineman was assessed 40 demerits, as was Mr. Sinclair. Given Mr. Booth's record the Arbitrator can see no reason to disturb the measure of discipline assessed by the Company. For the foregoing reasons both grievances must be dismissed.

MICHEL G. PICHER,
ARBITRATOR.