

CANADIAN RAILWAY OFFICE OF ARBITRATION

Case No. 1676

Heard at Montreal Thursday, July 16, 1987

Concerning

CANADIAN NATIONAL RAILWAYS

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of discipline assessed the record of Locomotive Engineer J. Dunn of Montreal, Quebec

JOINT STATEMENT OF ISSUE:

On June 23, 1986, J. Dunn was employed as a Locomotive Engineer on Train 525, a road switcher operating out of LaPrairie, Quebec.

Following the tour of duty, the grievor attended an investigation and was assessed forty demerits for violation of Paragraph I of General Instructions, Form CN 697.

The Brotherhood appealed the discipline on the grounds that it was too severe.

The Company declined the appeal.

FOR THE BROTHERHOOD:

(SGD) P.M. Mandziak
General Chairman

FOR THE COMPANY:

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

There appeared on behalf of the Company:

D.W. Coughlin	- Manager Labour Relations, Montreal
J. Bart	- System Labour Relations Officer, Montreal
M.C. Darby	- Coordinator Transportation, Montreal
C. St. Cyr	- System Labour Relations Officer, Montreal
L.G. Finnerty	- System Master Mechanic, Montreal

And on behalf of the Brotherhood:

P.M. Mandziak	- General Chairman, St. Thomas, Ontario
C. Hamilton	- Local Chairman, Montreal

AWARD OF THE ARBITRATOR

It is not disputed that the grievor violated engine and train handling instructions by nullifying the dead man pedal by means of a weight. While the Company suggests that he did so while running his unit on the road, that inference is not sustained by the evidence. The arbitrator accepts, on the balance of probabilities, the explanation given by the grievor, namely that he temporarily nullified the dead man pedal while securing his unit on a shop track in order to verify the operation of the hand brake. That procedure is not correct, and nevertheless constitutes a violation of the general instructions, Form CN697. The gravity of the offence is, however, somewhat mitigated by the location of the unit at the time, being on a shop track of level grade, protected by a butt end and a derail device at either end.

Other mitigating factors may be taken into account. Among them is the grievor's seniority of some 13 years and, significantly, the fact that his disciplinary record was without blemish at the time of the incident in question. The intentional nullifying of a locomotive safety device remains, however, a serious offence. In respect of the appropriate measure of penalty, the Company refers the arbitrator to CROA Case No. 778 in which a conductor and brakeman were each assessed 30 demerit marks for failing to remove a derail before undertaking a movement into an ore car shop, causing the derailment of a unit. While precise comparisons are difficult, and the record in that file does not give any indication of the prior disciplinary record of the grievors, I deem it appropriate in the instant case to substitute the imposition of 25 demerits, having particular regard to the grievor's record, my conclusion that he was not travelling over the road or, indeed, involved in any train movement. The grievor's record shall therefore be amended accordingly.

MICHEL G. PICHER
ARBITRATOR