CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1705

Heard at Montreal, Thursday October 15, 1987

Concerning

CANADIAN NATIONAL RAILWAY

And

THE UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of the discipline assessed Yard Foreman B. A. Shaw of Kamloops, B. C., January 25, 1985.

JOINT STATEMENT OF ISSUE:

Yard Foreman B. A. Shaw was assessed 15 demerit marks effective January 25, 1985: "for failure to complete assigned work during tour of duty January 25, 1985, 1600-2400 Yard Assignment, Kamloops, B. C."

The Union has appealed the discipline on the grounds that it was unwarranted and that the Company failed to allow Yard Foreman Shaw the right to cross examine all parties in violation of Article 117.2, Agreement 4.3.

The Company has declined the appeal.

| FOR THE UNION: | FOR THE COMPANY: |
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| (SGD) L. H. OLSON<br>General Chairman | (SGD) D. C. FRALEIGH<br>Assistant Vice-President<br>Labour Relations |

There appeared for the Union:

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| L. H. Olson | - General Chairman |
| J. W. Armstrong | - Vice-General Chairman |
| W. G. Scarrow | - General Chairman |
| B. A. Shaw | - Grievor |

And for the Company:

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| L. Harms | System Labour Relations Officer, |
| J. Hnatiuk | Manager Labour Relations, Montreal |
| D. C. St. Cyr | System Labour Relations Officer, |
| B. Ballingall | System Labour Relations Officer, Edmonton |
| L. E. Merryfield | Trainmaster, Kamloops |
| J. R. DeNeef | General Yardmaster, Kamloops |
| M. C. Darby | Transportation Co-Ordinator, Montreal |

## AWARD OF THE ARBITRATOR

The material establishes that during the course of his tour of duty of January 25, 1985 Yard Foreman Shaw was subject to a number of conditions, not of his own making, which delayed the progress of his crew in the fulfillment of their assignment. There was, for example, a delay in the delivery of the switch lists to the crew, difficulty locating and switching the caboose assigned after the initial caboose was found to be unfit, time taken for a lunch period requested by the Engineman, and the delay occasioned by waiting for a train to clear the block between Mann and Kissick. The Arbitrator is satisfied that these events did contribute to slowing down the progress of the grievor's crew on the day in question.

The issue, however, is whether even allowing for these delays, Mr. Shaw's crew should have been able to accomplish their work assignment in the time allotted. The evidence of Yardman J. M. Lister confirms that the work assigned was not heavy, involved switching in two separate industrial yards, and should have been completed within approximately two and a half hours. The evidence also establishes that there were periods of delay, which in total would roughly approximate that time, for which no adequate explanation was provided. As the person responsible for the assignment in question, Yard Foreman Shaw was subject to discipline to the extent that his own failure to plan and execute the assignment can be said to have contributed to the fact that no significant work was accomplished during the entire tour of duty.

On a careful review of the evidence the Arbitrator is satisfied that Mr. Shaw has failed to produce such an explanation, and that the Company is justified in its conclusion that his failure to adequately perform his duty contributed substantially to the fact that the assignment was not completed. Moreover, given that there was no reliance by the Company on the period of approximately fifteen minutes relative to the information originating with Yardmaster Knox, no violation of Article 117.2 of the Collective Agreement is disclosed. In these circumstances the assessment of discipline against the grievor was justified, and the Arbitrator is satisfied that the recording of fifteen demerits is within the appropriate range of disciplinary response in the circumstances.

For these reasons the grievance must be dismissed.

MICHEL G. PICHER
ARBITRATOR