

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1709

Heard at Montreal, Tuesday, November 10, 1987

Concerning

CANADIAN NATIONAL RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Assessment of 20 demerit marks to Trainman J. A. Prosia, Toronto, and payment of time claims related to attendance at the investigation.

JOINT STATEMENT OF ISSUE:

On 22 March 1986, Extra 2032 West was delayed in Niagara Falls Yard. Trainman Prosia attended an investigation in connection with his responsibilities in the matter. As a result of the investigation, Trainman Prosia was assessed 20 demerit marks for:

Sleeping on duty, while employed as Rear Trainman on Train Extra 2032 West (436) Niagara Falls Yard (mileage 0.6 Grimsby Sub.) on March 22, 1986.

The Union appealed the assessment of 20 demerit marks on the grounds it was unwarranted and that the grievor was not provided a fair and impartial hearing. The Union also contends that Trainman Prosia is entitled to the payment of loss of earnings pursuant to Article 70 of Agreement 4.16.

The Company has declined the appeal of the discipline assessed and the payment of time claimed.

FOR THE UNION:

(SGD) R. A. BENNETT
General Chairman

FOR THE COMPANY:

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

There appeared on behalf of the Company:

J. B. Bart	- Labour Relations Officer, Montreal
D. W. Coughlin	- Manager Labour Relations, Montreal
J. Pasteris	- Labour Relations Officer, Montreal

A. E. Heft	- Labour Relations Officer, Montreal
D. K. House	- System Transportation Officer, Montreal
P. G. Drew	- Superintendent, Moncton
W. B. Radford	- Witness

And on behalf of the Union:

T. G. Hodges	- General Chairman, Toronto
B. LeClerc	- General Chairman, Quebec
N. Robinson	- Local Chairman, Toronto

AWARD OF THE ARBITRATOR

In this matter the burden of proof is upon the Company. The Arbitrator has had the opportunity to review the voluminous transcript of the investigation conducted by the Company, as well as the evidence of Mr. Radford given at the hearing. On the whole of the material I cannot conclude, on the balance of probabilities, that Trainman Prosia was found sleeping by Mr. Radford or, as was at one time alleged, that he was negligent in the use of the radio. In this regard I note that Mr. Radford did not accuse the grievor of sleeping when he first encountered him, and acknowledged during the course of the investigation that during the tour of duty in question he did provide the grievor with a battery to correct an apparent difficulty with his portable radio. The record also leaves unanswered questions about whether the grievor and his crew were not in fact left in some doubt as to whether they were considered on duty while awaiting the arrival of the conductor.

For these reasons the grievance must be allowed. The twenty demerits assessed against the grievor's record shall be removed forthwith and he shall be compensated for his loss of earnings pursuant to Article 70 of the Collective Agreement. I remain seized of this matter in the event of any dispute between the parties respecting the interpretation or implementation of this award.

MICHEL G. PICHER
ARBITRATOR