

## CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1732

Heard at Montreal, Wednesday December 9, 1987

Concerning

CANADIAN NATIONAL RAILWAY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE :

Appeal of discipline assessed the record of Locomotive Engineer D. B. James of Winnipeg, Manitoba.

JOINT STATEMENT OF ISSUE:

Subsequent to formal investigations held in Winnipeg, the record of Locomotive Engineer D. B. James was assessed 20 demerit marks effective 11 April 1987 for the improper submission of time returns claiming time already submitted, and 20 demerit marks for violation of U.C.O.R. Rules 14L, 30 and 43 on Train Extra 5117 East, 22 May 1987 on Rivers Subdivision. As a result, Locomotive Engineer James was discharged effective 29 May 1987 for the accumulation of demerit marks.

The Brotherhood contends that Locomotive Engineer James submitted the duplicate time returns in error and there was no attempt on his part to defraud the Company, therefore, the 20 demerit marks should be removed from his record. The Brotherhood further contends, in the matter of the rule violations, that discipline assessed was unduly harsh and severe and that a lesser penalty should be imposed which would allow for the reinstatement of Locomotive Engineer James.

The Company declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD) P. SEAGRIS  
General Chairman

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

There appeared on behalf of the Company:

C. St. Cyr - Labour Relations Officer, Montreal

J. R. Hnatiuk	- Manager Labour Relations, Montreal
K. Heller	- Assistant General Superintendent Winnipeg
M. C. Darby	- Co-Ordinator Transportation, Montreal

And on behalf of the Brotherhood:

P. Seagris	- General Chairman, Winnipeg
D. B. James	- Grievor
G. Love	- Local General Chairman

#### AWARD OF THE ARBITRATOR

The material establishes that Engineer James had committed a number of infractions while in control of Train Extra 5117 East on May 22, 1987 on the Rivers Subdivision. He failed to properly sound his whistle at a public crossing at grade at Mileage 90.9. While he chose not to sound the whistle because of his understanding that the crossing was closed to the public, he had no instructions to that effect and normal rules of the road were still in effect. His action therefore constituted a violation of U.C.O.R. Rule 14(1). He also violated U.C.O.R. Rule 30 by failing to ring his train's bell within 1/4 of a mile of public crossings at both Mileage 58.16 and Mileage 90.9 on the Rivers subdivision. It is also established that at Mileage 90.9 Engineer James was travelling at a speed of twenty-six miles per hour, some thirty per cent in excess of the twenty mile per hour limit in force under Train Order 2079. None of the foregoing infractions is disputed.

At the time of these incidents the grievor's discipline record stood at fifty-five demerits. In these circumstances the Arbitrator considers it unnecessary to deal with the demerit marks assessed in relation to the alleged improper submission of time returns. On the whole I cannot accept the argument of the Union that the grievor should not be discharged as a result of what it describes as a collection of "misdemeanors". While the grievor has some twenty-two years service, and his discharge is obviously a hardship, he cannot claim immunity from the system of progressive discipline that is an implicit part of his contract of employment.

Locomotive Engineer James' disciplinary record between December of 1983 and January of 1987 is markedly negative. On December 15, 1983 he was disciplined for derailing a locomotive because of his disregard of the Symington Operating Manual. In December of 1984 he was interviewed for an accumulation of forty-five demerit marks. In May of 1985 he was assessed ten demerits for violation of U.C.O.R. rules 14(1), 30, 32 and Item 3.2, Rivers Subdivision Footnotes, Prairie Region Timetable No. 25. In June of 1985 he was further interviewed by reason of his record standing at fifty-five demerits. In December of 1986 twenty demerits were assessed against him for a violation of a slow order, at Mileage 58.16 of the Rivers Subdivision. Perhaps the most significant measure of discipline imposed against the grievor was that coupled with the ten demerits effective May 27, 1985: he was then additionally restricted to yard

service as a locomotive engineer for the period of one year.

Mr. James has been given every opportunity to appreciate that the quality of his service must improve. Withstanding continous discipline, however, he has committed further rules infractions, including a speeding violation which must be viewed as serious. On any assessment of the evidence I cannot avoid the conclusion that the Company was entitled to assess twenty demerits against the grievor's record for his rules violations alone. As matters stood, even five demerits would have placed in him a dismissable position. For these reasons the Arbitrator must conclude that the Company had just cause to impose discipline upon the grievor and that his discharge was justified in the circumstances.

MICHEL G. PICHER  
ARBITRATOR