

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1762

Heard at Montreal, Wednesday, March 9, 1988

Concerning

CANADIAN NATIONAL RAILWAY

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Appeal of discipline assessed the record of Machine Operator W.B. Lylyk effective 10 June 1986.

JOINT STATEMENT OF ISSUE:

On 10 June 1986, Mr. Lylyk was operating a Ballast Regulator machine when it was in collision with a Tamper at Mileage 60.1 on the Kashabowie Subdivision.

Following an investigation, Mr. Lylyk was assessed 40 demerit marks for violation of Rules 4.4.4, 4.6.1 and 4.6.2 of Form 1233E and for general disregard for the personal safety of himself and fellow employees. This resulted in Mr. Lylyk's discharge from service effective 4 July 1986 due to the accumulation of demerits in excess of 60.

The Brotherhood contends that the discipline assessed Mr. Lylyk was unreasonable because he had limited experience in operating a Ballast Regulator, had not received proper training and had been poorly supervised.

The Company denies the Brotherhood's contention.

FOR THE BROTHERHOOD:

(SGD) G. SCHNEIDER  
System Federation  
General Chairman

FOR THE COMPANY:

(SGD) J.P. GREEN  
for: Assistant Vice-President  
Labour Relations

There appeared on behalf of the Company:

J. Glazer	- Counsel, Montreal
G. Blundell	- Labour Relations Officer, Montreal
E. D. Ferens	- Manager, Labour Relations, Montreal
M. Chuchmuch	- Supervisor, Maintenance, Winnipeg
M. Vaillancourt	- Engineer Coordinator, Montreal
A. Watson	- System Labour Relations Trainee, Montreal

And on behalf of the Brotherhood:

M. Gottheil	- Counsel, Assistant to the Vice-President, Ottawa
G. Schneider	- System Federation General Chairman
R. A. Bowden	- System Federation General Chairman Ottawa
R. Phillips	- General Chairman, Belleville
J. Rioux	- General Chairman, Hornepayne
S. Glass	- Observer
C. A. Masek	- Observer

#### AWARD OF THE ARBITRATOR

The material establishes that Mr. Lylyk did violate the rules of Form 1233E for which discipline was assessed against him. Specifically, he failed to exercise a sufficient degree of care and attention in the operation and stopping of the Ballast Regulator under his control, causing it to collide with a Tamper at Mileage 60.1 on the Kashabowie Subdivision, causing \$250,000.00 in damage. At the time of the incident the grievor's disciplinary record stood at forty demerits. The sole issue is whether the imposition of forty demerits and the discharge of the grievor were appropriate measures of discipline in the circumstances.

The Brotherhood submits that a mitigating factor to be taken into account is the fact that at the relative time the grievor was travelling eastward within the limits of an area for which his foreman held the Track Occupancy Permit. The grievor was proceeding eastward as instructed by his foreman, unaware that the Tamper was proceeding in the opposite direction towards him, also according to the direction of his foreman. The Brotherhood submits that because the grievor was unknowingly placed on a collision course, and was without any radio equipment to give him better information about his situation, he should not be held fully at fault for what resulted. It also notes that he was relatively new to the operation of the Ballast Regulator, having worked on it for only a few days prior to the accident. The Brotherhood's counsel also stresses that the grievor's record had no previous Rules violations relating to the movement of equipment.

The Arbitrator has considered these submissions, and the evidence tendered, closely. While it is true that the grievor was relatively inexperienced in the operation of the Ballast Regulator, it is not disputed that he was fully trained in the operation of heavy track maintenance equipment generally, and that the controls of the Ballast Regulator governing its braking and acceleration are not appreciably different from those of other pieces of equipment with which he was familiar. It is also clear that the grievor had a sufficient sightline to the approaching Tamper to stop safely if he had been observing the appropriate speed and operating with sufficient caution to allow him to stop within half his range of vision. This he failed to do, and I must conclude that but for his own avoidable failure the

costly collision which resulted would not have occurred.

This is not a case of an employee with an otherwise good record having been discharged for a single lapse of attention resulting in a collision. The grievor, whose length of service is not long, had a perilously high number of demerits to his record at the time of the incident. Even if it is accepted that forty demerits was an excessive measure of discipline in the circumstances, given the gravity of the grievor's error, the Arbitrator cannot conclude that he was not, at a minimum, deserving of twenty demerits, which would still place him in a dismissable position.

For the foregoing reasons the grievance must be dismissed.

(SGD) MICHEL G. PICHER  
ARBITRATOR