

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1806

Heard at Montreal, Tuesday, 12 July 1988

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN SIGNAL AND COMMUNICATIONS UNION

DISPUTE:

Appeal of discipline assessed S&C Maintainer G. Violette effective 16 July 1987.

JOINT STATEMENT OF ISSUE:

Following an investigation, Mr. Violette was assessed 10 demerit marks for a violation of Section 3.0 of Form 835.

The Union contends that the discipline assessed was unwarranted and requests that it be removed from Mr. Violette's record.

The Company disagrees with the Union's contention and denied the request to remove the discipline from the grievor's record.

FOR THE UNION:

(Sgd) J. E. PLATT  
National President

FOR THE COMPANY:

(Sgd) W. W. WILSON  
for: Assistant Vice-President  
Labour Relations

There appeared on behalf of the Company:

T. D. Ferens	- Manager, Labour Relations, Montreal
G. Blundell	- Labour Relations Officer, Montreal
R. Paquette	- Senior Analyst, Montreal
H. Hartman	- Labour Relations Officer, Moncton
W. Trenholm	- System Manager, Operations S&C, Montreal
R. MacKinnon	- S&C Engineer, Moncton
T.E. Graham	- Supervisor S&C MAintenance, Edmunston

And on behalf of the Union:

A. G. Cunningham - National Vice-President, Montreal  
A. B. Vigneault - Assistant to the Vice-President, Montreal  
G. T. Violette - Grievor

#### AWARD OF THE ARBITRATOR

The facts giving rise to this grievance are the same as those in C.R.O.A. 1805. On July 16, 1987 Signal and Communications Maintainer Violette carried out maintenance duties on a portion of territory between Edmunston East and St. Leonard West. To do so he held a Track Occupancy Permit between Signal 2039 at Quisibis and Signal 1962 at St. Leonard West on the Napadogan Subdivision. According to Mr. Violette's account, upon reaching St. Leonard West he decided to drive his hy-rail into a non-signalled siding in order to proceed to a crossing where he could remove it from the track. To do so he had to remove the power from the switch beyond Signal 1962. It is not disputed that this necessitated his travelling on the hy-rail for a distance of between one hundred and two hundred feet on the main track outside the limits of his track occupancy permit.

The Company imposed ten demerits for the grievor's actions. Implicit in its position is the belief that in fact Mr. Violette did not remove his hy-rail from the siding, but did so from the main track. In support of that contention the Company notes that while there were planks on the crossing for the main track which would allow the hy-rail to be removed, there were none at that location on the adjacent siding. However, it does not appear, from the record of the investigation, that the grievor was confronted with this belief on the part of the Company, or asked to explain how he could have removed his hy-rail from the siding in the absence of planks. It was explained at the hearing, however, that there were planks lying near the siding, and that by moving one plank next to the rail the grievor was able to remove his vehicle. On this aspect of the evidence the Arbitrator is inclined to give Mr. Violette the benefit of the doubt.

It would therefore appear that the grievor did not "foul the main track" contrary to Section 3.0 of Form 835 to the extent that the Company alleges. Apart from any determination as to whether the siding in the instant case would constitute a part of the "main track" for the purposes of the rules, and without in any way condoning the grievor's actions, the Arbitrator must conclude that the hazard in moving into the siding is significantly less than remaining in occupancy of the main track for a distance of some eighteen hundred and thirty-five feet without a Track Occupancy Permit. The material establishes, however, that Mr. Violette did fail to follow appropriate procedures, and proceeded across an undisputed portion of the main track without the necessary clearance. In all of the circumstances the Arbitrator is satisfied that the imposition of five demerits is a more appropriate disciplinary response, and the grievor's record shall be amended accordingly.

July 15, 1988

(SGD) MICHEL G. PICHER  
ARBITRATOR

