CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1891

Heard at Montreal, Tuesday, 14 March 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN SIGNAL AND COMMUNICATIONS UNION

DISPUTE:

Appeal of dismissal of S&C Maintainer C.D. Cleland effective February 8, 1988.

JOINT STATEMENT OF ISSUE:

On January 14, 1988, Messrs. Noseworthy and Cleland manufactured a pipe bomb out of track torpedoes in their tool house at Houston, British Columbia. The bomb exploded prematurely resulting in Mr. Cleland receiving injuries.

The Union contends that dismissal of Mr. Cleland is excessive.

The Company disagrees with the contentions of the Union.

FOR THE UNION:	FOR THE COMPANY:
(SGD) J. E. PLATT National Vice-President	(SGD) D. C. FRALEIGH Assistant Vice-President Labour Relations

There appeared on behalf of the Company:

G. C. Blundell - Labour Relations Officer, Montreal
A. N. McMillan - Signal Supervisor, Pringe George
W. S. Trenholn - Assistant Manager, Operations S&C, Montreal
N. J. Dionne - Labour Relations Officer, Montreal
M. M. Boyle - Labour Relations Officer, Montreal

And on behalf of the Union:

R. E. McCaughan - National Vice-President, Winnipeg
A. G. Cunningham - National Vice-President, Montreal

AWARD OF THE ARBITRATOR

The material establishes, beyond dispute, that during a lunch break on January 14, 1988 at Houston, B.C. the grievor, and Signal Apprentice D. Noseworthy, an employee who was under his direction, attempted to manufacture a pipe bomb using a hollow tent pole, rail bolts and explosive powder removed from a number of track torpedoes. Mr. Cleland assembled the bolts and nuts to be used in manufacturing the bomb, and brought them to the tool house where Mr. Noseworthy began the operation of assembly, placing the pipe in a vise on a tool bench. As Mr. Noseworthy was turning the pipe with a pipe wrench, to compress the powder within it, while holding the pipe in his left hand, it exploded. Tragically, the concussion blew off Mr. Noseworthy's left hand and embedded metal fragments in his upper abdomen. He was very nearly killed. The grievor, who was standing behind Mr. Noseworthy suffered no substantial injury.

Both employees were discharged, and both were charged for contraventions of the Explosives Act, and in the case of Mr. Noseworthy, of the Criminal Code with respect to the manufacturing of an explosive device. Upon entering a plea of guilty, Mr. Noseworthy received a suspended sentence, while the charges against the grievor were stayed by the Crown.

The grievor has seven years' service with the Company. It is not disputed that on the day in question he was in a position of responsibility with respect to the apprentice working with him. The Arbitrator cannot disagree with the Company's characterization of Mr. Cleland's actions as gross negligence and dereliction of his responsibilities. There is, moreover, reason to be concerned with respect to the candour of the grievor in this matter. While his account of the events suggests that the contents of six explosive track torpedoes were used, the evidence at the scene following the explosion reveals that some seventeen track torpedoes were found to have been emptied of their powder. It is also clear that in the critical initial stages following the explosion, when the Company was required as a precaution to stop rail traffic moving through Houston near the site of the tool house, while Mr. Noseworthy was under emergency medical care, Mr. Cleland remained at his residence, refusing to speak to Company supervisors to give them any clear account of what had happened. His final disclosures, such as they are, were made only one week after the fact, following a police investigation.

The grievor's record is not without blemish. On September 17, 1987 he was assessed twenty demerits for being absent without authorization and falsely reporting his time. In the circumstances I am satisfied that Mr. Cleland's wanton recklessness and irresponsibility, which resulted in a serious lifetime injury to a fellow worker, and might easily have killed them both, is deserving of the most severe disciplinary response. In light of the length of his service, his prior disciplinary record and the questionable candour which he displayed in respect of this unfortunate incident, the Arbitrator can find no basis upon which to justify the substitution of a lesser penalty.

For the foregoing reasons the grievance must be dismissed.

March 17, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR