CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2122

Heard at Montreal, Tuesday, 12 March 1991

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Discipline assessed the record of Locomotive Engineer G.C. Dyer, of Kamloops, effective December 21, 1988, and subsequent discharge, effective January 24, 1989.

JOINT STATEMENT OF ISSUE:

On December 21, 1988, Locomotive Engineer Dyer was called for Train 791, operating from Kamloops to Boston Bar over the Ashcroft Subdivision. Following an investigation into the operation of Train 791 on that date, Locomotive Engineer Dyer's record was assessed 35 demerit marks for:

... the overspeed operation of train Extra 5323 West, IDP 791LY 20, for the violations of U.C.O.R. Rules 14(1) and 30 and for blocking the bail of the independent brake valve in violation of General Operating Instruction, CN Form 696, Item 16.1(9) while employed as the Engineman on 21 December 1988.

The discipline assessment led to Locomotive Engineer Dyer's discharge, effective January 24, 1989, due to the accumulation of sixty or more demerit marks.

The Brotherhood contends that the discipline and subsequent discharge was too severe. The Brotherhood further contends that the utilization of Article 87 (Demotion/Restriction), paragraph 87.2 of Agreement 1.2, would have been more reasonable in the circumstances.

The Company declined the appeal.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) W. A. WRIGHT	(SGD.) M. DELGRECO
ACTING GENERAL CHAIRMAN	for: ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

L. A. Harms	-- System Labour Relations Officer, Montreal
P. D. Morrisey	-- Manager, Labour Relations, Montreal
W. Stasiuk	-- Labour Relations Officer, Edmonton

L. Finnerty -- System Master Mechanic, Montreal

And on behalf of the Brotherhood:

W. A. Wright -- Acting General Chairman, Kamloops

AWARD OF THE ARBITRATOR

The sole issue before the Arbitrator is the measure of discipline appropriate in the circumstances of the grievor's case. The evidence discloses a number of serious rules infractions by Locomotive Engineer Dyer on December 21, 1988. The record reveals that between Mileage 32.8 and Mileage 33.6 on the Ashcroft Subdivision the grievor's train movement was monitored on radar operating at eight miles per hour above the maximum permissible speed for that location. Notwithstanding that the supervisor monitoring the train immediately brought the infraction to the grievor's attention by radio, the record further reveals that later in the same run, at Mileage 124.0, the grievor's train operated at a speed some twelve miles per hour in excess of the permissible speed of thirty miles per hour. Additionally, on two occasions neither the engine whistle nor the engine bell were utilized upon approach of public crossings, contrary to the requirements of UCOR Rules 14(l) and 30, while on seven other occasions the engine bell was not activated in accordance with UCOR Rule 30. Additionally, the evidence discloses that in other locations and at other times, such as at the end of double track, on curves and upon approaching stations the grievor did not activate the whistle of his engine as required by UCOR Rule 14(l). Lastly, contrary to General Operating Instructions, Form 696, Item 16.1(9), the grievor deliberately used a coin to block the independent brake valve of his locomotive units. This had the result of nullifying the emergency feature of the locomotive brake.

What the record discloses is a series of infractions that demonstrate a knowing or reckless disregard of a number of important running rules which clearly relate to the safe operation of a train. Of particular concern is the repeated speeding offence at Mileage 124, notwithstanding the fact that the grievor had been specifically cautioned about his overspeed at Mileage 33.6 during the course of the same trip. Additionally, the blocking of the independent brake valve, in knowing contravention of the General Operating Instructions, shows a deliberate disregard for an operational safety rule. This aspect of the grievor's conduct cannot be minimized as the result of forgetfulness or inadvertence.

At the time of the infraction in question the grievor's record stood at forty demerits. Those points, unfortunately, were the accumulation of two prior overspeed violations in May 1987 and April 1988, respectively. In light of that record, and the fact that the grievor's actions disclose both a reckless and deliberate disregard of rules fundamental to the safe operation of his train, I must conclude that the assessment of 35 demerits was within the range of appropriate discipline. Accordingly, the grievance is dismissed.

March 15, 1991 (Sgd.) MICHEL G. PICHER
ARBITRATOR