

TRANSLATION

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2123

Heard at Montreal, Tuesday, 12 March 1991

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of the discipline assessed Conductor R. Trempe and Brakemen M. Parsons and P. B,lair.

JOINT STATEMENT OF ISSUE:

On January 4, 1990, Conductor R. Trempe and Brakemen M. Parsons and P. B,lair were working on Train 420 (Extra 9640 South) from Garneau to Montreal on the Joliette Subdivision. At Mileage 100, the train entered the work limits of Track Maintenance Foreman Plaisance, violating MBS Clearance No. 719.

Following investigations held into this incident, Conductor R. Trempe was assessed a 90-day suspension. Brakemen B,lair was assessed a 60-day suspension for failure to comply with Section 3.0, Item 3.2, paragraphs 1 and 1(a) of the General Operating Instructions (CN-696), and Special Systems Instruction 2.17 of Timetable No. 62. A 60-day suspension was also assessed Brakeman M. Parsons for failure to comply with Special System Instruction 2.17 of Timetable No. 62.

The Union contends that the discipline imposed was too severe and requests that it be reduced.

The Company declined the Union's appeal.

FOR THE UNION:

(SGD.) R. LEBEL  
for: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) M. DELGRECO  
for: ASSISTANT VICE-PRESIDENT  
LABOUR RELATIONS

There appeared on behalf of the Company:

M. S. Hughes  
J. B. Bart  
J. Pasteris

-- Labour Relations Officer, Montreal  
-- Manager, Labour Relations, Montreal  
-- Manager, Labour Relations, St.  
Lawrence Region, Montreal

D. Parent -- Assistant Manager, Operations, CMC,  
Montreal

And on behalf of the Union:

R. Lebel -- General Chairperson, Quebec  
J. Collet -- Local Chairperson, Quebec  
G. Hall, -- General Chairman, BLE, Quebec  
G. Whiteman -- Local Chairman, BLE, Montreal  
R. Mongeon -- Witness  
R. Trempe -- Grievor  
P. B,lair -- Grievor  
M. Parsons -- Grievor

#### AWARD OF THE ARBITRATOR

The Union submits that, although the employees deserve some measure of discipline, suspension was not justified in the circumstances, given the grievors' disciplinary records, length of service and the standard discipline assessed in similar cases.

The Arbitrator finds that position to be well founded. The three grievors had clear discipline records at the time of the incident of January 4, 1990, and in the case of Messrs. Trempe and B,lair their records had been clear for the past five years. In light of these records, Mr. Trempe's twenty-four years of service and the seventeen years' service of both Mr. B,lair and Mr. Parsons, it seems doubtful to me that a long suspension would be justified. This conclusion is supported, moreover, not only by the lighter discipline imposed by the Company in a good number of similar cases, but by prior arbitral awards as well (see CROA 1305, 1696, 1710, 1943, 2053 and 2071).

Also, the fact that the Company bulletined the positions of the three employees the day following the incident casts serious doubt on the Company's claim that these factors had been taken into account.

For the foregoing reasons the grievance is allowed, in part. The grievors will be compensated for their loss of wages and benefits and the suspensions will be stricken from their records. Mr. Trempe will be assessed 30 demerit marks and Messrs. Parsons and B,lair will be assessed 20 demerits each.

March 15, 1991

(Sgd.) MICHEL G. PICHER  
ARBITRATOR