CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2128

Heard at Montreal, Thursday, 14 march 1991

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

The twenty demerit marks assessed Mr. J. Fortin, Locomotive Attendant, for having failed to report an accident.

JOINT STATEMENT OF ISSUE:

An investigation was held on November 18, 1989, at which the grievor denied having committed any infraction. Following the investigation, the employee was assessed twenty demerit marks for "having failed to report the lateral collision between coaches 3338 and 5440 the night of November 10-11, 1989."

The Brotherhood appealed the discipline alleging that the damage was minimal and that the Corporation did not demonstrate, beyond a shadow of a doubt, that the grievor was responsible for the damage caused to the coaches.

The Corporation rejected the Brotherhood's appeal.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) T. McGRATH	(SGD.) C. C. MUGGERIDGE
NATIONAL VICE-PRESIDENT	DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

C. Pollock	Senior Labour Relations Officer, Montreal
D. Fisher	Senior Labour Relations Officer, Montreal
G. Cyr	Labour Relations Officer, Montreal
D. Lamy	Controller, Montreal
F. Paradis	Assistant Controller, Montreal

And on behalf of the Brotherhood:

R. Moreau	Regional Vice-President, Montreal
F. Bisson	Local Chairman, Montreal
J. C. Fortin	Grievor

AWARD OF THE ARBITRATOR

Certain facts in this case are not in dispute. During the night of November 11, 1989, Mr. Fortin was working as a locomotive attendant. At about 5:45 a.m., he was responsible for the movement of a conventional train which he was directing toward the area of the car wash in the Maintenance Centre. While Mr. Fortin was located on the ground in order to direct the movement of the train, the head end coach neared a track on which an LRC train was stationed. At that moment, Mr. Fortin shouted: "Stop! Stop! Stop!" to his co-worker, Mr. Richard Fauteux, who was at the controls of the locomotive. Controller Dominic Lamy heard this urgent radio communication and was able to observe, on the television monitor in his office, that Mr. Fortin's train stopped suddenly at a point where the last coach of the conventional train could be touching one of the coaches of the LRC train.

Having received no incident or damage report from Mr. Fortin, Mr. Lamy went to examine the two trains in question a short time later. It is agreed that there was a scratch of some inches on LRC car no. 3338 and that the grab iron on the last car of Mr. Fortin's conventional train also bore a fresh scratch.

According to the evidence of Mr. Lamy, which is corroborated by the evidence of Mr. Fran‡ois Paradis, Mr. Fortin admitted his knowledge of the damages in question when he was called to the control centre shortly thereafter. According to these two witnesses, at that time Mr. Fortin said to Mr. Lamy: "I made a scratch of about 1 inch long on the coach and I do not see any necessity to report it to you, when there are other persons who have damaged the front of the switcher and whom you had not been able to apprehend.

At a subsequent investigation, as well as before the Arbitrator, Mr. Fortin denied having made this admission and declared that there was no accident. The Arbitrator deems that, in light of the undisputed facts, the evidence of Mr. Fortin appears much less plausible than that of his supervisors. The sudden stop of his train near the LRC train following his shout to his co-worker, as well as the presence of fresh scratches seen shortly thereafter on the two coaches in question, puts into great doubt Mr. Fortin's evidence. It should be emphasised that in the instant case it is a matter of establishing the facts based on the balance of probabilities, and not beyond a shadow of a doubt as in a criminal case. Altogether, I consider that the evidence of Messrs. Lamy and Paradis is honest, and that Mr. Fortin did admit to them to having failed in his obligation to make a report of the incident.

Mr. Fortin's discipline file reveals his complicity in a deception which involved the embezzlement of Corporation funds in 1988, for which he received fifteen demerit marks. On thje whole, I consider that the twenty demerits assessed his discipline record for the incident of November 11, 1989 were justified.

For these reasons, his grievance is dismissed.

March 15, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR