

CANADIAN RAILWAY OFFICE OF ARBITRATION  
CASE NO. 2331  
Heard at Montreal, Thursday, 11 February 1993  
concerning  
CANADIAN NATIONAL RAILWAY COMPANY  
and

UNITED TRANSPORTATION UNION

DISPUTE:

Dismissal of Yard Foreman S.C. Campbell of Edmonton, Alberta.

JOINT\_STATEMENT\_OF\_ISSUE:

On September 9, 1991 Mr. S.C. Campbell was employed as Yard Foreman on the 1300 Extra Yard Assignment which was pulling a cut of 21 loaded cares and 6 empty cars off the CN/CP interchange track to take into Clover Bar Yard. Upon proceeding westward on the Wainwright Subdivision, the movement passed Signal 2595 which was indicating stop.

Following an investigation into the incident, Yard Foremen Campbell was discharged from Canadian National Railways effective September 18, 1991: "For violation of Rule 429, CROR and failure to comply with the requirements of Rule 572, CROR at Signal 2595 Wainwright Sub on September 9, 1991"

The Union has appealed the discipline on the grounds that it was unwarranted, but in any event the resultant discharge was too severe given the circumstances.

The Company has denied the appeal.

FOR THE UNION:

FOR THE COMPANY:

(SGD.)\_J.\_W.\_ARMSTRONG

(SGD.)\_G.\_C.\_BLUNDELL

GENERAL CHAIRMAN

for: SENIOR VICE-PRESIDENT, WESTERN CANADA

There appeared on behalf of the Company:

M. W. Becker

Labour Relations Officer, Edmonton

G. C. Blundell

Manager, Labour Relations, Edmonton

J. Torchia

Manager, Labour Relations, Montreal

M. Darby

District Superintendent, Transportation, Edmonton

M. Fisher

Coordinator, Special Projects, Montreal

And on behalf of the Union:

J. W. Armstrong

General Chairman, Edmonton

S. C. Campbell

Grievor

#### AWARD\_OF\_THE\_ARBITRATOR

On the basis of the material filed the Arbitrator must conclude that the Company was correct in its determination that Mr. Campbell was responsible for a violation of CROR Rules 429 and 572. The evidence discloses that, because of inattention, he failed to alert the locomotive engineer with whom he was working in sufficient time to prevent their yard movement from passing a stop signal. In coming to that conclusion the Arbitrator is satisfied, on the balance of probabilities, that Mr. Campbell failed to call the signal as it was being approached, as he is required to do. His claim that he did is cast into serious doubt by the fact the locomotive engineer involved states that he cannot recall his having done so. Moreover, it is clear that the exercise of reasonable diligence on the part of Mr. Campbell would have given him an opportunity, regardless of the engineer's actions, to institute an application of the emergency brakes to avoid the infraction which occurred.

At the time of the incident Mr. Campbell, who is not a long service employee, had forty-five demerits on his record for a number of rules infractions, at least one of which involved a derailment. His record of rules infractions, in so junior an employee, is plainly not impressive. Moreover, the Arbitrator cannot accept the submission of the Union that the treatment of Mr. Campbell was inequitable as compared with the discipline assessed against the locomotive engineer, who was suspended for ninety days. The undisputed representation of the Company is that the locomotive engineer, who clearly shared responsibility for the incident, was an employee of some sixteen years with an unblemished record.

The violation of CROR Rule 429 (formerly UCOR 292) is among the most serious of rules infractions. Having regard to the grievor's prior record, given that the assessment of fifteen demerits would have resulted in his discharge for the accumulation of demerits, it is difficult to see on what basis the discipline assessed against him can be reduced. On the whole I am compelled to find that the assessment of fifteen demerits would fall within the range of discipline for an infraction of this kind, and that no significant mitigating factors are disclosed.

For the foregoing reasons the grievance must be dismissed.

February 12, 1993

(Sgd.)\_MICHEL\_G.\_PICHER

ARBITRATOR