

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2754

Heard in Montreal, Wednesday, 10 July 1996

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**NATIONAL AUTOMOBILE, AEROSPACE, AND AGRICULTURAL  
IMPLEMENT WORKERS UNION OF CANADA [CAW CANADA]**

### **DISPUTE:**

The assessment of 50 demerits to the record of Michel Black which resulted in his discharge for accumulation of 60 demerits.

### **JOINT STATEMENT OF ISSUE:**

The Union contends that the assessment of 50 demerits to Mr. Black's discipline file for placing Tamo grease on a shower stall mat was too severe, and the practice of progressive discipline was not adhered to in this case. The Union seeks in resolution of this case that the Company reinstate Mr. Black to his former position of Cleaner, Taschereau Yard, Montreal, without loss of seniority and benefits for his time out of service.

The Company's position is that the assessment of 50 demerits was both warranted and appropriate in this instant case.

### **FOR THE UNION:**

**(SGD.) A. S. WEPRUK**

**NATIONAL CO-ORDINATOR**

### **FOR THE COMPANY:**

**(SGD.) A. E. HEFT**

**FOR: SENIOR VICE-PRESIDENT, CN EAST**

There appeared on behalf of the Company:

L. Caron

– Manager, Labour Relations, Montreal

Y. Goulet

– Agent, Mechanical, Personnel and Administration, Mechanical Services, Montreal

And on behalf of the Union:

A. S. Wepruk

– National Co-ordinator, Montreal

M. Black

– Grievor

## **AWARD OF THE ARBITRATOR**

The evidence establishes that the grievor deliberately created a dangerous situation by pouring grease on a shower mat in the workshop at Taschereau Yard on July 25, 1995. It is not disputed that this juvenile and irresponsible act is deserving of a serious measure of discipline.

The sole issue to be resolved is whether the assessment of 50 demerits and discharge are justified in the circumstances. The Company's representative submits that the grievor has two significant problems; a penchant for "settling accounts" with the other employees and a tendency to make practical jokes, to the point of indifference to the well-being of others.

The Arbitrator accepts that the prior discipline of Mr. Black justified, to a certain degree, the suspicions of the employer. However, the case of the grievor must be judged in light of all the facts, including any mitigating factors.

It appears from the evidence that the action of Mr. Black was not entirely "unprovoked" as the Company claims. According to the evidence of the grievor, which is uncontradicted, he placed the grease on the shower mat to avenge himself on another employee whom he believed to be the author of a joke committed against the grievor earlier in the day. This involved the placing of a quantity of the same grease on the receiver of a public telephone in the workshop, just before Mr. Black was to use it. This caused him to get grease on his ear, which was certainly difficult to remove. Therefore, according to his explanation, he wished, in revenge, to inflict a similar stain on his persecutor.

The Arbitrator cannot approve in any way the irresponsible conduct of Mr. Black. But given the circumstances, there is reason to conclude that the assessment of 50 demerits, which resulted in his discharge, is an excessive penalty, and that the return to work of Mr. Black (in another location as the shop at Taschereau is closed) may be accomplished in a spirit of rehabilitation, under certain conditions.

For these reasons the grievance is allowed, in part. The Arbitrator orders that the grievor be reinstated into his employment, without loss of seniority, and without compensation for wages and benefits lost, with a total of ten demerits on his discipline record. However, Mr. Black shall be reinstated only if he agrees to participate in a programme approved by the Company's Employee Assistance Program (EAP) relevant to the control of temper when faced with the actions of others. The details and duration of the programme may be negotiated between the parties. If they are unable to agree on this, the matter may be spoken to. The Arbitrator remains seized.

July 12, 1996

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**