

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2821

Heard in Montreal, Thursday, 16 January 1997

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND  
GENERAL WORKERS UNION OF CANADA (CAW-CANADA)**

### **DISPUTE:**

Dismissal of Mr. T. DeRose for the accumulation of demerits.

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

Following an investigation held on 30 November 1994, Mr. DeRose was assessed 20 demerits for poor work performance and insubordination toward a supervisor. When added to Mr. DeRose's current discipline record, which stood at 50 demerits, he accumulated 70 demerit marks resulting in his dismissal from service.

It is the Union's position that the allegation of 30 November 1994 which gave rise to the dismissal was largely based on an unsigned statement allegedly written by a supervisor. At no time during the investigation did the Company show any evidence that this statement was factual. Therefore, the Union requests that Mr. DeRose be reinstated with full compensation of wages, benefits and seniority.

The Company denies the request.

### **FOR THE UNION:**

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

### **FOR THE COMPANY:**

**(SGD.) J. TORCHIA**  
FOR: SENIOR VICE-PRESIDENT, WESTERN CANADA

There appeared on behalf of the Company:

D. Lanthier	– Labour Relations Officer, Edmonton
S. Michaud	– Labour Relations Officer, Edmonton
J. Dixon	– Manager, Labour Relations, Edmonton
C Colquhoun	– Senior Technical Officer, Winnipeg

And on behalf of the Union:

A. S. Wepruk	– National Coordinator, Montreal
A. DeRose	– Grievor

### **AWARD OF THE ARBITRATOR**

The Arbitrator deems it appropriate to consolidate these grievances to be dealt with in a single decision, given that they generally relate to a pattern of conduct exhibited by the grievor and, for the most part, his ongoing difficulties in relations with his supervisors.

The Arbitrator is satisfied that in each of the four instances reviewed the grievor was deserving of some discipline. When the record of the four incidents is examined, however, there are mitigating factors which come to bear. With respect to the altercation between the grievor and Supervisor Ron Davis, the Arbitrator is satisfied that there was a degree of provocation and over-reaction on the part of Mr. Davis which was at least in part a cause of the incident. Even accepting the grievor's account that Mr. Davis struck the first blow, it is clear that Mr. DeRose's reaction was excessive in the circumstances and was plainly deserving of a serious degree of discipline.

Secondly, with respect to the assessment of twenty demerits for poor work performance and insubordination, the Arbitrator cannot sustain the discipline, as it relates to the issue of poor work performance. The material before me discloses that the Company's investigating officer was directly involved in the alleged incident of poor work performance, having himself inspected the locomotive units which the grievor is alleged to have improperly serviced. For reasons related in prior jurisprudence of this office (*see CROA 1720*) that aspect of the discipline must be viewed as a nullity. The same cannot be said, however, with respect to the allegation of insubordination. On the whole, I am satisfied that the grievor did engage in verbal insubordination towards his supervisor, as alleged, and that he did have the benefit of a fair and impartial investigation with respect to that allegation.

In the result, I am satisfied that this is an appropriate case for a reinstatement, but without compensation. Mr. DeRose must appreciate, however, that any future infractions on his part involving disrespect towards his supervisors, poor timekeeping and absenteeism, or poor work performance may have the most serious of disciplinary consequences.

For the foregoing reasons the grievances are allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment, without loss of seniority and without compensation for wages and benefits lost. His disciplinary record shall stand at forty-five demerits.

January 20, 1997

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