

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2859

Heard in Calgary, Thursday, 15 May 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]**

EX PARTE

DISPUTE:

Discharge of Conductor Mike Melymick of Edmonton, Alberta, who was assessed 45 demerits “[f]or responsibility for the unauthorized movement over the east switch, Entwistle resulting in violation of CROR 566 limits of authority at signal 656 Edson Subdivision, at 1729 MDT on August 07, 1996”. This resulted in the discharge of Conductor Melymick for accumulation of demerits.

COUNCIL’S STATEMENT OF ISSUE:

The Union submits that the assessment of 45 demerits is too severe. This was an isolated incident and was the grievor’s first tour of duty for a train of this type and in addition, his first trip on the Edson Subdivision. His regular assignment was in Yard Service. The Union requests that the grievor be reinstated with full compensation and that his record be made whole.

The parties were unable to agree on the reinstatement of the grievor and therefore the Union requests the Arbitrator to resolve this matter.

FOR THE COUNCIL:

(SGD.) M. G. ELDRIDGE
FOR: GENERAL CHAIRPERSON

There appeared on behalf of the Company:

D. Lanthier	– Labour Relations Officer, Edmonton
J. T. Torchia	– Manager, Labour Relations, Edmonton
S. Michaud	– Assistant Manager, Labour Relations, Edmonton
J. Dixon	– Assistant Manager, Labour Relations, Edmonton
S. Blackmore	– Labour Relations Officer, Edmonton
D. Van Cauwenbergh	– Labour Relations Officer, Edmonton
K. Morris	– Labour Relations Officer, Edmonton

And on behalf of the Council:

D. Ellickson	– Counsel, Toronto
M. G. Eldridge	– Vice-General Chairman, Edmonton
M. Melymick	– Grievor

AWARD OF THE ARBITRATOR

The Arbitrator must agree with the Council that the assessment of forty-five demerits for the responsibility of the grievor in relation to the violation of signal 656 of the Edson Subdivision, on August 7, 1996 is excessive. It is common ground that the grievor was assigned to be a conductor pilot for the movement of a track unit from Wildwood to Walker Yard on the Edson Subdivision. The grievor, whose regular assignment was yard service, had never previously worked on the Edson Subdivision. The evidence further discloses that the operator of the track unit with whom the grievor was travelling was also of limited experience.

Conductor Melymick took over the piloting function from Conductor C.T. Cole at milepost 66.3 at Entwistle, some half mile distant from signal 656. He clearly indicated to Conductor Cole, as well as to the operator, that he had no prior experience on the subdivision. The evidence discloses that as the track unit proceeded eastwards towards signal 656, at what appears to have been a fair rate of speed, Conductor Melymick reviewed the documentation provided to him to determine the limits of his track unit's authorized movement. Just as the unit was approaching signal 656 he realized that he was not authorized to proceed beyond that point and immediately shouted to the operator to stop, repeating his directive twice before the operator responded. In the result, the track unit encroached beyond its authorized limits by some three car lengths before it came to a stop.

It is undeniable that the violation of the limits of Conductor Melymick's authority beyond signal 656 was a serious infraction in the movement of equipment under rule 566 authority, being not unlike the passing of a stop signal or the intrusion, without clearance, into an area restricted by a track occupancy permit. Each case must, however, be considered on its specific facts. In the case at hand it is not unreasonable to question the assignment of a person to the safety sensitive position of a pilot when that individual, like the grievor, has himself had no experience on the subdivision in question. It does not appear disputed that the grievor had little time to familiarize himself with the orders restricting the movement of the track unit, as they were aboard the unit itself, and the operator proceeded directly towards signal 656 immediately after Mr. Melymick came aboard. It is also arguable that the incident would have been avoided had the operator responded more promptly to the grievor's first order to stop. While the circumstances do not excuse the grievor's actions, as he should obviously have stopped the unit until such time as he was certain about his orders, they should, in the Arbitrator's view, be applied in mitigation.

In all of the circumstances the Arbitrator is satisfied that a measure short of the assessment of forty-five demerits, and discharge, is appropriate. A substitution of a substantial suspension will, I believe, sufficiently communicate to the grievor the importance of exercising care in similar circumstances in the future. The Arbitrator therefore directs that the grievor be reinstated into his employment, without compensation for wages or benefits lost, and without loss of seniority, with the forty-five demerits to be removed from his record.

Dated at Montreal, May 30, 1997

(signed) MICHEL G. PICHER
ARBITRATOR