

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2897

Heard in Montreal, Thursday, 16 October 1997

concerning

ST. LAWRENCE & HUDSON RAILWAY COMPANY

and

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

DISPUTE:

Appeal of the discipline assessed Conductor Martin Bangert (40 demerit marks).

JOINT STATEMENT OF ISSUE:

Conductor Martin Bangert was assessed forty demerit marks on October 25, 1995 for:

“... deliberately and unnecessarily delaying the movement of customer traffic on trains 401 and 402 between Toronto and Mactier, Ontario, through substandard work performance on September 29, 1995, Ontario South Division.”

The Council submits that the time it took Mr. Bangert to perform his duties was fully justified in the context of the prevailing circumstances.

The Council further submits that he performed his duties impeccably and complied with all the rules, regulations and procedures in the performance of those duties.

The Council requests that the forty demerit marks be expunged from his record and that he be reinstated to active service with seniority and compensation for all time out of service.

The Company declines the Council's request.

FOR THE COUNCIL:

(SGD.) D. A. WARREN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) G. CHEHOWY
FOR: DISTRICT MANAGER

There appeared on behalf of the Company:

G. Chehowy	– Manager, Labour Relations, Toronto
M. Oliphant	– Labour Relations Officer, Toronto
F. O. Peters	– Manager, Yard Operations, Toronto

And on behalf of the Council:

P. Sadik	– Counsel, Toronto
D. A. Warren	– General Chairman, Toronto
J. N. DeTilly	– Vice-General Chairman, Montreal
M. Bangert	– Grievor

AWARD OF THE ARBITRATOR

A review of the material establishes, beyond any doubt, that the grievor engaged in inexplicable delays in the handling of Trains 401 and 402 between Toronto and MacTier on September 29, 1995. Unfortunately, the grievor's record discloses some five prior occasions in which he was disciplined for similar delays. A recurring feature in a number of these incidents is that the grievor and his crew claimed duplicate payments for delays in switching, under the Conductor-Only provisions of the collective agreement. While the Union attempts to characterize Mr. Bangert's actions as those of an extraordinarily conscientious conductor who works to the letter of each rule, the Arbitrator is compelled to a much less flattering conclusion. To give but one example, I find the fact that the grievor insisted that his train remain immobile while he completed certain paper work, on the purported basis that he could not safely perform his other duties as a conductor while his train was in motion if he were so occupied, to be entirely implausible and specious in the extreme. In my view Mr. Bangert knew, or reasonably should have known, that it was incumbent upon him to work to a reasonable standard of efficiency, and that like all other conductors, he should do his paper work while his train was under way. He was also bound to know that his obligations in the inspection of trains during the course of switching or marshalling did not involve the kind of detailed inspection to be expected of a carman.

The grievor cannot claim to be a long term employee, having some nine years of service at the time of the incident. As noted above, his record is replete with notations of unexplained and unjustified delays in trains which operated under his direction. It seems clear to the Arbitrator that progressive discipline has had no impact on Mr. Bangert, and that there is little reason to believe that a reduction of penalty would substantially change his way of doing things. At the time of the incident in question the grievor's discipline stood at forty-nine demerits, and he had been cautioned by the Company as to the precariousness of his position, albeit to no avail. In all of the circumstances the Arbitrator is persuaded that even if a reduction of penalty were appropriate, to perhaps the level of twenty or twenty-five demerits, Mr. Bangert would nevertheless remain in a dismissable position. Moreover, given his prior record, I do not consider it appropriate to disturb the Company's assessment of forty demerits.

For all of the foregoing reasons the grievance must be dismissed.

October 30, 1997

(signed) MICHEL G. PICHER
ARBITRATOR