CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2953
Heard in Calgary, Thursday, 14 May 1998
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[BROTHERHOOD OF LOCOMOTIVE ENGINEERS]

DISPUTE:

Appeal of the discipline, 30 day suspension, assessed to Locomotive Engineer M.A. Roy of Kamloops, B.C. on February 21, 1993.

JOINT STATEMENT OF ISSUE:

On February 21, 1992, Mr. M,A. Roy was employed as the locomotive engineer on train 454, Extra 5271 East from Kamloops to Kelowna. The crew was in possession of CP Rail Clearance No. 705 authorizing them to operate over CP Rail track from Kamloops to Campbell Creek on the CP Shuswap Subdivision. The train proceeded beyond the limits authorized in the clearance.

Following an investigation, Mr. Roy was assessed a thirty (30) day suspension for the operation of Train Extra 5271 East beyond the limits authorized in CP Rail Clearance No. 705 dated February 21, 1993.

The Brotherhood has appealed the discipline on the grounds that it is too severe.

The Company disagrees.

FOR THE COUNCIL: **FOR THE COMPANY:**
(SGD.) **Q. J. SHEWCHUK** (SGD.) **D. VAN CAUWENBURGH**
FOR: **GENERAL CHAIRMAN** FOR: **ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:
J. Dixon - Assistant Manager, Labour Relations, Edmonton
D. Van Cauwenbergh - Labour Relations Officer, Edmonton
J. Bauer - Human resources Business Partners, Great Plains District,Transportation, Edmonton
And on behalf of the Council:
D. J. Shewchuk - Sr. Vice-General Chairman, Saskatoon
D. E. Brummund - Vice-General Chairman, Saskatoon

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond controversy, that the grievor was in fact involved in a serious violation of operating rules when he operated his train beyond authorized limits over a short segment of CP Rail track at or about Mile 117 of the Shuswap Subdivision. The

evidence establishes that Extra 5271 East, operated by the grievor, received OCS clearance from the CP Rail RTC to proceed on the eastward CP track from Kamloops to the crossover switch at Mile 1] 7 of the Shuswap Subdivision. In fact the grievor proceeded some 168 feet beyond the limits of his OCS clearance, and proceeded through the junction switch and onto the CN Okanagan Subdivision.

The only real issue in the case at hand is the appropriate measure of discipline. On the whole, the Arbitrator is compelled to accept the position of the Company that an infraction of this kind, following proper notice to the employees with respect to the seriousness of such rules' violations communicated in May of 1990, is in the range of a ninety day suspension. In the instant case the Company mitigated the suspension to thirty days by reason of the grievor's long service and clear discipline record at the time of the incident. Additionally, the Council's suggestion that there was some ambiguity in both the CN and CP timetables with respect to the precise point at which a movement would leave the CP Rail main line at Campbell Creek is accounted for, in my view, in the discipline assessed. In the result, the thirty day suspension is within the appropriate range of discipline, and the grievance must be dismissed.

May 19, 1998

MICHEL G. PICHER
ARBITRATOR