

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3005

Heard in Calgary, Thursday, 12 November 1998

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

Appeal of discipline, ninety (90) day suspension, of Assistant Conductor D.W. Ewald of Calgary, Alberta effective August 17, 1997 for violation of CROR 311 (b), and 142 of Special Instruction on August 17, 1997.

JOINT STATEMENT OF ISSUE:

On August 17, 1997 the grievor was working as assistant conductor on train #556-51-17. The crew was enroute between Calgary, Alberta and Kindersley, Saskatchewan. The crew entered Foreman MacDonald's work limits without authority. As a result the grievor and crew were removed from service and attended investigations held on August 21 (Conductor O'Neill & the grievor) and August 29, 1997 (Locomotive Engineer Trevor Adamson). The conductor and the locomotive engineer were discharged from service. The grievor was assessed a ninety (90) day suspension.

The Council's position is that the discipline assessed to the grievor is excessive and therefore requests that the discipline be mitigated to a lesser degree and that the grievor be fully compensated, without loss of seniority or benefits.

The Company disagrees.

FOR THE COUNCIL:

(SGD.) **M. G. ELDRIDGE**

**FOR: GENERAL CHAIRPERSON
RELATIONS**

FOR THE COMPANY:

(SGD.) **S. BLACKMORE**

FOR: ASSISTANT VICE-PRESIDENT, LABOUR

There appeared on behalf of the Company:

S. M. Blackmore - Labour Relations Associate, Great Plains District, Edmonton

A. E. Heft - Manager, Labour Relations, Toronto

J. Bauer - Human Resources Business Partner, Great Plains District, Edmonton

L. Bronson - District Superintendent, Transportation, Great

Plains District, Edmonton

T. Cowieson - Superintendent, Transportation, Edmonton
S. Lintick - Assistant Superintendent, Transportation, Edmonton
And on behalf of the Council:
M. G. Eldridge - Vice-General Chairperson, Edmonton
D. Ellickson - Counsel, Toronto
M. Janssen - Vice-General Chairperson, Winnipeg

AWARD OF THE ARBITRATOR

The facts in relation to the discipline of Assistant Conductor Ewald are fully related in **CROA 3006**. It is common ground that the grievor's train proceeded over a segment of the Oyen Subdivision on August 17, 1997 in violation of a number of operating rules. Specifically, his movement failed to observe a speed restriction over a bridge and, shortly thereafter, improperly travelled virtually the full extent of territory under the track occupancy permit of a track maintenance foreman.

The incidents in question resulted in the discharge of the locomotive engineer and conductor who were part of the grievor's crew, as well as the assessment of the ninety day suspension against Assistant Conductor Ewald. It appears that the Company subsequently reinstated the locomotive engineer, on the basis of certain mitigating factors which need not be elaborated here. The sole issue in these proceedings is the appropriate measure of discipline to be assessed against Assistant Conductor Ewald.

It is common ground that at the time of both incidents Mr. Ewald was in the second locomotive unit, where he had been dispatched by the locomotive engineer to attempt to restart the unit which had apparently shut down. It is not disputed that he was, nevertheless, under an obligation to remain vigilant and remind his fellow crew members about the upcoming speed restriction and track occupancy permit which they would soon encounter. By his own admission, he failed to do either. As related in **CROA 3006**, the encroachment of the grievor's train into the area for which Track Foreman MacDonald held a track occupancy permit is a cardinal rules infraction which, in another circumstance, could have had disastrous results. Fortunately the maintenance crew were on a side track when they were encountered by the grievor's movement.

As Mr. Ewald was not in a position to observe the speed restriction flags, no discipline was assessed against him with respect to the overspeed of the train over the bridge at mileage 119.3 of the Oyen Subdivision. He was, however, assessed a ninety-day suspension for his involvement in the cardinal rule infraction relating to disregard of Foreman MacDonald's track occupancy permit.

While the seriousness of a cardinal rule infraction is obvious, there are mitigating factors to be taken into account in the assessment of the penalty appropriate to the grievor in the case at hand. It is not disputed that Assistant Conductor Ewald was an employee of some twenty years' service at the time of the incident in question. Over all of those years

he had only once been previously disciplined for a rule infraction, apparently within the first ten days of his employment in 1977. Thereafter he has maintained an exemplary discipline free record, recording no rules violations whatsoever prior to the incident at hand. In that circumstance I am not persuaded that the assessment of a ninety day suspension, the equivalent of the loss of a quarter of a year's earnings, is an appropriate measure of discipline in the circumstances, even though a serious suspension is within the appropriate range of discipline for a first cardinal rules violation. Based on the quality of the grievor's prior service, I am satisfied that the assessment of a forty-five day suspension would have been ample in the circumstances to convey to him the seriousness of his error, and would have had the desired rehabilitative effect.

The grievance is therefore allowed, in part. The Arbitrator directs that a suspension of forty-five days be substituted for the ninety day suspension assessed against Assistant Conductor Ewald, with compensation to be paid to him for the balance of wages and benefits lost.

November 17, 1998

MICHEL G. PICHER
ARBITRATOR