

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3028

Heard in Montreal, Thursday, 14 January 1999
concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS

DISPUTE:

Appeal of discipline, twenty-five (25) demerits assessed to Assistant Conductor T.K. Pastl of Saskatoon, Saskatchewan effective July 1, 1998 for violation of CROR Rule 104.5(b) on July 1, 1998. The assessment of discipline resulted in discharge from the Company for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On July 1, 1998 the grievor was working as assistant conductor on a 09:00 tramp assignment in Saskatoon. The crew was switching at Warman, Saskatchewan and the conductor placed some cars into track A1327. The balance of the cars were to be placed into Track A1325. The grievor sent the movement into the track. The results were that the lead car of the movement was shoved over a derail at the east end of the track.

The Company held an investigation on July 09, 1998 and on July 24, 1998 assessed the grievor twenty-five (25) demerits resulting in discharge for accumulation of demerits.

The Council submits that the assessment of twenty-five demerits and discharge of the grievor is too extreme. The Council requests that the discipline assessed to the grievor be mitigated to a lesser degree and that she be compensated without loss of seniority or benefits.

The Company disagrees with the Council's position.

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

B. Pellerin - Assistant Superintendent, Transportation, Saskatoon

And on behalf of the Council:

D. Ellickson - Counsel, Toronto

M. G. Eldridge - Vice-General Chairperson, Edmonton

T. K. Pastl - Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor was responsible for a violation of CROR rule 104.5(b) on July 1, 1998. She failed to ride the point of her movement as it was being pushed into storage track AB25 at Warman, Saskatchewan. In the result, the track was insufficient to contain the number of cars being handled, resulting in a car pushing through the derail at the eastern extremity of the track, and derailing. The grievor indicates that she relied, in part, on information provided to her by Yard Conductor M.S. Klassen who was then working with her, albeit he was located in a different track. The fact remains, however, that the grievor was responsible to know and observe the head end of her movement, and she failed in that responsibility contrary to the rule, as well as rule 115. Those rules read, in part, as follows:

104.5 (b)A train or engine must not approach to within 100 feet of a derail set in the derailing position

115 (a) When equipment is pushed by an engine, a crew member must be on the leading car or on the ground, in a position to observe the track to be used and to give signals or instructions necessary to control the movement.

At the time of the incident the grievor's record stood at fifty demerits. The assessment of twenty-five demerits resulted in an accumulation of demerits in excess of sixty, resulting in the termination of Ms. Pastl's services. The sole issue in these of substance in these proceedings is whether the Arbitrator should, in the circumstances disclosed, exercise his discretion to substitute a different penalty.

The record discloses that while Ms. Pastl was hired in August of 1989, leaves of absence and periods of layoff have resulted in her performing approximately four years of active service for the Company. Her record was discipline free for a substantial period of time, however. The first discipline against her was registered in relation to an incident in January of 1997, which was the subject of the companion grievance heard in **CROA 3027**. The record before the Arbitrator discloses that Ms. Pastl's work performance suffered a dramatic negative turn in the latter part of 1997. On September 18 she was assessed ten demerits for a violation of rule 104(k) which involved a side collision; on November 19 she was issued a written reprimand for a violation of rule 106(a) resulting in a derailment and equipment damage; on November 21 she was assessed ten demerits for an unsatisfactory work record; on December 4 ten further demerits were assessed for a violation of rules 104.5(a) and (b), also involving a derailment. Very simply, if this matter were to be determined solely on the basis of the grievor's prior service and discipline the grievance would have little chance of success. There are, however, mitigating factors placed before the Arbitrator which bear consideration.

Counsel for the Council advises that the grievor came under a substantial degree of stress in her personal life in late 1997. That is when the normal standard of care in the performance of her work substantially declined, resulting in the rapid sequence of discipline reviewed above. Counsel relates that the grievor's difficulties stem primarily from a serious problem of gambling addiction which affected her husband, and to some degree herself. As a result, she came under considerable marital and financial strain through 1997, which culminated in her divorce in February of 1998. It is not disputed that she was absent from work for a period of two months in the summer of 1997, at which time she was medically treated for clinical depression. In the early part of 1998, as related by the grievor's counsel, Ms. Pastl sought counselling assistance, and was ultimately referred to the Company's EFAP officers. According to her account she was able to benefit from a number of counselling sessions from January through March of 1998. Counsel submits that her improved work performance during that period is indicative of the causal link between her personal problems and the previous degeneration of her disciplinary record.

Understandably, the Company questions the information concerning the grievor's personal circumstances, the details of which were only advanced for the first time at the arbitration hearing. While the Arbitrator appreciates the nature of that concern, it would appear that the employer's legitimate interests can be protected by conditions attached to an order or reinstatement. In the instant case, I am persuaded by the mitigating factor of the grievor's personal circumstances, and its relation to the rapid deterioration of her disciplinary record within a short period of time in 1997. I am equally persuaded, however, that the order of this Office should be framed in terms which fairly protect the Company's interests.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into her employment, without compensation or benefits, and without loss of seniority, on condition that she first provide to the Company written confirmation of her participation in counselling through the EFAP program in early 1998. The grievor's reinstatement is further conditional upon her accepting to be again assessed by the EFAP program, and to follow any course of on-going counselling which may be recommended. In the event that any such program is established for the grievor, her continued reinstatement shall be conditional upon the Company receiving written confirmation of her ongoing participation in any such program, until it is satisfactorily completed. Should there be any dispute between the parties with respect to the interpretation or implementation of this award, the matter may be spoken to.

January 18, 1999

MICHEL G. PICHER
ARBITRATOR