

**CANADIAN RAILWAY OFFICE OF ARBITRATION**

**CASE NO. 3051**

**Heard in Calgary, Wednesday, 12 May 1999**

**concerning**

**CANADIAN NATIONAL RAILWAY COMPANY**

**and**

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS  
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)**

**DISPUTE:**

Appeal the assessment of discipline (40 demerits) and time held out of service for violation of CROR Rules 90 and 142 (b) which resulted in a violation of CROR 311 (b) on March 5, 1998.

**JOINT STATEMENT OF ISSUE:**

On March 6, 1998, Mr. R.I. Sampson was employed as Locomotive Engineer on Train A4561-06 operating between Kitimat and Terrace, B.C. on the Kitimat Subdivision. The grievor's train was operating under OCS Clearance No. 2004 with a restriction to protect Engineering Foreman Reiersen's work limits between Mile 21 and Mile 2.2. The grievor's train entered the working limits at Mile 21 and proceeded to Mile 18 without first obtaining the proper authority as required by CROR 3 11 (b).

As a consequence of the above, Mr. Sampson was held out of service pending an investigation.

The Company held an investigation on March 11, 1998, concluding that the grievor was responsible for violation of CROR 90, 142(b) and CROR 31 1(b). As a result of the Company's investigation, the grievor was assessed 40 demerits and time held out of service.

The Council contends that the discipline assessed is excessive and further, does not reflect the principles of progressive discipline.

The Council requests a reduction in the demerits with no monetary loss to the grievor.

The Company disagrees and has declined the appeal.

**FOR THE COUNCIL:**

**(SGD.) Q. J. SHEWCHUK**

**FOR: GENERAL CHAIRMAN**

There appeared on behalf of the Company:

J. Dixon  
**FOR THE COMPANY**  
**(SGD.) R. RENY**

**FOR: SR. VICE-PRESIDENT - OPERATIONS**

- Human Resources Business Partner, Vancouver

And on behalf of the Council:

D.J. Shewchuk                      - Vice-General Chairman, Saskatoon  
O. Boyd                               - Local Chairman, Calgary

**AWARD OF THE ARBITRATOR**

The facts of the instant grievance are related in **CROA 2991**. It is not disputed that on March 6, 1998 Locomotive Engineer Sampson operated train A45651-06 in disregard of a track occupancy permit held by Engineering Foreman Reiersen between Mile 21 and Mile 2.2 on the Kitimat Subdivision. Mr. Sampson's train proceeded approximately three miles beyond the restricted limits without authorization, and stopped only when radioed by Foreman Reiersen. By any account, the rules infractions for which the grievor has been assessed forty demerits are extremely serious, sometimes referred to as cardinal rules. As the submissions of the Company confirm, discipline for such infractions has traditionally ranged between thirty demerits and dismissal.

The issue therefore becomes whether there are mitigating factors to be considered in favour of a reduction of penalty in the case at hand. In **CROA 2991**, in light of the length and quality of service of Conductor Davies, who was involved in the same incident, the Arbitrator declined to disturb the assessment of forty demerits. After careful consideration, however, I am satisfied there are mitigating factors which do weigh more favourably in favour of Locomotive Engineer Sampson. While his actions are no less serious than those of Conductor Davies, the length and quality of the grievor's prior record of service is substantially more favourable as a mitigating factor. Originally hired in August of 1974, Locomotive Engineer Sampson had some twenty-four years of good service prior to the incident in question. Significantly, according to the representations of the Company, he was previously disciplined on only one occasion for a rules violation of any kind, when fifteen demerits were assessed against him in 1987. Against that background I am satisfied that there is latitude for a reduction of penalty, albeit a penalty which nevertheless recognizes the severity of a cardinal rules infraction.

For the foregoing reasons the Arbitrator directs that thirty demerits be substituted for the penalty assessed against Locomotive Engineer Sampson, with his disciplinary record to be adjusted accordingly.

May 14, 1999

**MICHEL G. PICHER**  
**ARBITRATOR**