

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3055**

Heard in Calgary, Thursday, 13 May 1999
concerning

CANADIAN PACIFIC RAILWAY COMPANY
and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)

DISPUTE:

Discipline of 20 demerits assessed to Yard Foreman M.P. Edward of Coquitlam, B.C., and his subsequent dismissal for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On September 28, 1997, while spotting a customer track, the movement contacted the stop blocks at the end of the track and derailed one car. Yard Foreman M.P. Edward was issued 20 demerits for:

... failing to properly supervise and execute work assigned to you, for failing to comply with instructions contained in Bulletin NO-29 as evidenced by your allowing your train to handle more cars than authorized when spotting Track G5K, Pacific Cost Terminals at Port moody, and for failing to ensure that your train was stopped sufficiently short of stop blocks; resulting in car ACFX 73392 contacting stop blocks and derailling; a violation of instructions contained in bulletin VO-29, at Port Moody, B.C., September 28, 1997.

The Council appealed the discipline and dismissal stating that Bulletin VO-29 was dated May 26, 1995 and was never re-issued. Therefore, the Council asserts that the bulletin and instructions contained therein are outdated and not in effect on September 28, 1997, and are considered void as outlined in CROR Rule 83(c). Furthermore, the Council alleges the facts of the instant case do not support the assessment of discipline to Mr. Edward as outlined.

The Council has requested that the discipline assessed be expunged and that Mr. Edward without loss of seniority and with full compensation for wages and benefits.

The Company has declined the Council's request.

FOR THE COUNCIL:

(SGD.) **L. O. SCHILLACI**
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) **R. M. SMITH**
FOR: DISTRICT GENERAL MANAGER, BC DISTRICT

There appeared on behalf of the Company:

R. M. Smith - Labour Relations Officer, Calgary
L. J. Guenther - Road Manager, Vancouver

And on behalf of the Council:

D. Ellickson - Counsel
L. O. Schillaci - General Chairperson, Calgary
D. Firmson - Vice-General Chairperson, Saskatoon
M. P. Edward - Grievor

AWARD OF THE ARBITRATOR

On the basis of the material before me I am satisfied that this is an appropriate case for a substitution of penalty. While I share the view of the Company that Conductor Edward could have been more careful in the execution of the movement when spotting tank cars in Track G5K at the Pacific Coast Terminal at Port Moody, the evidence suggests certain mitigating factors which should be taken into account. Firstly, it would appear, as is apparently conceded by the Company, that the primary responsibility for the derailment of the tank car resides in the locomotive engineer, who released the brakes, causing the slack in his train to let go, which allowed the tank car to move over the stop blocks and beyond the capacity of the track. Additionally, it does not appear disputed that the Company failed to renew a bulletin which had previously provided specific instructions with respect to the limit of cars which could safely be moved into the track, which is on a downhill grade. While the Company maintains that the grievor should have been aware of the situation by reason of the pre-existing operating bulletin VO-29, a document dated May 26, 1995 which prescribed a maximum of twenty-two glycol loads to be handled while spotting, that directive was no longer in effect on the date of the incident for which Mr. Edward was disciplined. While it is arguable that the grievor should, from prior experience, have brought a greater degree of judgement to bear, the Arbitrator finds substance in the argument of the Council to the effect that the Company was itself remiss in not renewing the precautionary bulletin to the attention of employees in the position of Mr. Edward.

In the result, the Arbitrator is satisfied that the circumstances do justify a reduction of penalty. The grievor is to be reinstated into his employment, without compensation for wages and benefits lost, and without loss of seniority. The twenty demerits assessed shall be stricken from his record and the period of time from his discharge to reinstatement shall be recorded as a suspension for the incident in question. Given his relative short service and prior record, Mr. Edward must appreciate that the recurrence of any such incident in the future may give rise to the most serious of disciplinary consequences.

May 14, 1999

MICHEL G. PICHER
ARBITRATOR