

**CASE NO. 2936**

Heard in Montreal, Tuesday, 10 March 1998

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS**

**[UNITED TRANSPORTATION UNION]**

**EX PARTE**

**DISPUTE:**

Dismissal of Conductor S. Lafleur.

**EX PARTE STATEMENT OF ISSUE:**

On June 19, 1997, the grievor, Mr. S. Lafleur, was required to attend a Company investigation in "connection with circumstances surrounding alleged violation of CROR rule 83.1 special instruction 3(iv) on 15 June 1997".

Subsequent to the Company's formal investigation into this matter, Mr. Lafleur was also required to attend a Root Cause Analysis held by the Company into the matter under investigation during his formal investigation.

As a result of both investigations, the Company assessed Mr. Lafleur with 30 demerits which resulted in the discharge of Mr. Lafleur for accumulation of demerits.

The Union grieved the assessment of demerits and subsequent dismissal of Mr. Lafleur on the grounds that there were mitigating circumstances surrounding this case or, in the alternative, the discipline assessed was unwarranted or in any event too severe. The Union requested that Mr. Lafleur be reinstated immediately with no loss of seniority and compensated for all time lost.

The Company declined the Union's appeal.

**FOR THE COUNCIL:**

**(SGD.) M. P. GREGOTSKI**

**GENERAL CHAIRPERSON**

There appeared on behalf of the Company:

P. Marquis	- Labour Relations Officer, Toronto
J. Polley	- Superintendent, Transportation, Capreol
A. E. Heft	- Manager, Labour Relations, Toronto
D. C. McDonnell	- Senior Counsel, Montreal
G. Search	- Assistant Manager, Labour Relations, Toronto

And on behalf of the Council:

R. Beatty	- Vice-General Chairperson, Hornepayne
M. P. Gregotski	- General Chairperson, Fort Erie
G. Marsh	- Local Chairperson, Brockville
R. Dyon	- General Chairman, BLE, Montreal

## AWARD OF THE ARBITRATOR

The material before the Arbitrator discloses, beyond controversy, that on June 15, 1997 Mr. Lafleur operated Train 102 on the Ruel Subdivision in violation of the Rule 83.1 Tabular General Bulletin Order (TGBO). Specifically, the TGBO document provided to him gave him running authority from Hornepayne to Foleyet, being from mileage 295.6 to mileage 145 on the Ruel Subdivision. His train was in fact called for service from Homepayne, through Foleyet, to Capreol. He did not, however, have in his possession a TGBO granting authority to operate beyond mileage 145.

Notwithstanding the limit of his operating authority, Conductor Lafleur operated Train 102 a distance of 38.2 miles past Foleyet, in territory for which he had no authorization whatsoever. It appears that he discovered this discrepancy when his train encountered a yellow flag at approximately mile 106.8, which caused his crew to make inquiries, and to realize that their operating authority was limited to mile 145.

The grievor was clearly in serious violation of a cardinal rule. Following a disciplinary investigation he was assessed thirty demerits. Given that his disciplinary record then stood at forty demerits, with a written reprimand, his employment was terminated for the accumulation of sixty or more demerit marks.

The Council seeks to raise a number of mitigating factors in defence of the grievor. Most specifically, it submits that his transgression is indistinguishable from a similar infraction committed by Conductor W.A. MacLeish in the operation of his train operating in the opposite direction on the same subdivision on November 29, 1996. Notwithstanding that Conductor MacLeish and crew operated over a portion of the subdivision without proper TGBO authority, the Company conducted a Root Cause Analysis (RCA), with the result that Conductor MacLeish and crew were assessed thirty days out of active service, at reduced QSOC training rates, during which time they were to perform "community service" which involved sensitizing other employees as to the events leading to their cardinal rule violation. It is submitted on behalf of Conductor Lafleur that he should have received similar treatment in the circumstances.

Secondly, the Council questions the treatment of Conductor Lafleur, as compared with his locomotive engineer, Mr. Craig Paul. It is agreed that Mr. Paul had been involved in a prior cardinal rules infraction some four months previous. On that basis he was initially discharged for the incident of June 15, 1997. Thereafter, he was reinstated by an agreement between his bargaining agent and the employer, with forty-five demerits assessed and no monetary compensation for his time out of service. The Council submits that the discharge of Conductor Lafleur is inequitable when compared to the ultimate penalty meted out against Locomotive Engineer Paul.

Thirdly, the Council raises a number of objections based upon the

administration of the Company's Root Cause Analysis process as it applied to Conductor Lafleur. It submits that certain recommendations from the Root Cause Analysis report in Conductor MacLeish's case were not followed up, that inconsistencies are revealed in the manner in which employees have been withheld from service pending Root Cause Analysis of a cardinal rule violation, and that there has been an overall failure of the employer to abide by the spirit of its own Root Cause Analysis process.

The Arbitrator can appreciate the concerns of the Council as they relate to the manner in which the Root Cause Analysis process is applied in any given case, and the attention which is given to recommendations which emerge from RCA reports. It must be stressed, however, that the RCA process is not part of the collective agreement, and indeed was not negotiated between the Council and the employer. It is difficult, in these circumstances, to give great weight to arguments suggesting that the employer has departed from what is in effect a unilateral policy which it is at liberty to change as it sees fit. Absent a genuine demonstration of inequitable treatment or discrimination as among similarly situated employees, examination of the application of the RCA procedures and guidelines is of limited value.

In the end, the Arbitrator is faced with an employee of a relatively limited twelve years' service who has committed a cardinal rules violation. More significantly, Mr. Lafleur has amassed a remarkably negative disciplinary record over his years of service. He was once assessed demerits for operating at excessive speed, and also for a rules infraction resulting in a train-track motor car collision. As a result of the latter incident the grievor was discharged in May of 1990, only to be reinstated on compassionate grounds in September of 1991.

If the Brown System of discipline had any meaning for Mr. Lafleur, he knew or reasonably should have known that as an employee with forty demerits on his record, and a chequered past which includes some ten separate items of discipline over a twelve year period, the commission of a cardinal rules infraction, without compelling mitigating circumstances, would place him in a highly precarious position. It is well settled that rules violations similar to those engaged in by Conductor Lafleur justify the assessment of demerits in the range which was applied to him. (See, e.g., CROA 2053, 2071, 2377, 2540.)

Upon a review of the evidence I find the error committed by the grievor to be extremely serious. Of concern to the Arbitrator is the fact that, in addition to not reading his TGBO with proper care, Mr. Lafleur seemed not to be alerted to any level of concern by the fact that his TGBO apparently contained no restrictions or limitations whatever for a 145 mile segment of the Ruel Subdivision, an unlikely and unusual situation. In the result, the Arbitrator is compelled to conclude that the grievor was deserving of discipline, and that the assessment of thirty demerits was within the appropriate range. It may be noted that even the lower assessment of twenty demerits would have

resulted in Mr. Lafleur's termination. Given his length of service, the quality of his prior disciplinary record and the seriousness of the infraction committed, the Arbitrator can see no basis for mitigating the penalty assessed. Nor does the treatment of Locomotive Engineer Paul, whose prior disciplinary record was substantially better than the grievor's, or Conductor MacLeish, a thirty year employee with a clean disciplinary record at the time of his infraction, suggest any discrimination or inequity in the treatment of Mr. Lafleur.

For the foregoing reasons the grievance must be dismissed.

March 13, 1998

**MICHEL G. PICHER**  
ARBITRATOR