CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2949
Heard in Calgary, Wednesday, 13 May 1998
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]

DISPUTE:

Appeal of discipline, 90 day suspension, assessed to Conductor D.S. Coutts of Winnipeg, Manitoba on March 26, 1997.

JOINT STATEMENT OF ISSUE:

On March 26, 1997, Mr. D.S. Coutts who was working as the conductor on train C77041-25 received instructions to run around part of his train at Emerson Yard and shove the rail cars onto the Emerson extension track. As the movement was being shoved eastward onto the Emerson extension, the lead car (BN 533006) derailed on a crossing. Shortly thereafter, Mr. Coutts and crew pulled the rail cars, including the derailed equipment, off the extension track, which resulted in track damage and damage to bridge structure. Conductor D.S. Coutts was subsequently assessed a 90 day suspension for failure to conduct a proper job briefing as defined in CN Operating Manual, CN West Regional Data Section, Special Instructions, page 28, Item 1, Job Briefing - Field and Operating Manual Job Aid Section, and failure to comply with CROR General Rule A(VIII), CROR rules 103 and 106(d), 115 and GOI Item 5.1 I(c) on March 26, 1997 and failure to accept any responsibility for the derailment.

The Council contends that the discipline assessed Conductor D.S. Coutts was in violation of Article 117.1 of Agreement 4.3 whereby the Company failed to specify the charges being investigated and that the discipline was excessive. The Council also requests the grievor be reimbursed for the loss of wages and benefits during the time of suspension (90 days).

The Company denies the Council's contentions and declines the Council's request.

FOR THE COUNCIL:
(SGD.) M. G. ELDRIDGE
FOR: **GENERAL CHAIRPERSON**
There appeared on behalf of the Company: D. Van Cauwenbergh J. Torchia J. Dixon S. Blackmore J. Bauer
And on behalf of the Council: M. G. Eldridge B. J. Henry
FOR THE COMPANY:
(SGD.) D. VAN CAUWENBURGH
FOR: **ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**
Labour Relations Officer, Edmonton
Director, Labour Relations, Edmonton

Assistant Manager, Labour Relations, Edmonton
Labour Relations Officer, Edmonton
Human resources Business Partners, Great Plains District,
Transportation, Edmonton
Vice-General Chairperson, Edmonton
General Chairperson, Edmonton

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that Conductor Coutts was in charge of switching operations in respect of the delivery of a substantial number of empty coal cars at Emerson, Manitoba, where they were to be left for interchange to the Burlington Northern Railway. During the course of yarding the cars, Conductor Coutts instructed his crew to push a cut of cars into a spur referred to as the Emerson extension. While doing so he did not ride the lead car to ensure that the track ahead was clear. Rather, he stationed himself on the ground where he believed he had a reasonable view of the track into which the empties were being pushed. In fact, unbeknownst to the grievor, the lead car derailed while proceeding over a road crossing on the spur. Sometime later, still unaware of the derailed state of the end car, Conductor Coutts directed the pulling of the cars out of the extension to a position considerably distant in a northward direction in the Emerson Yard. In the result, the derailed car, which was the last in a consist of fifty-seven cars, was dragged over a substantial stretch of territory, including several yard switches and four bridges. This resulted in the virtual shredding of a considerable segment of railway ties on the line in question, as well as extensive bridge damage and a side collision and derailment of two Burlington Northern cars located on an adjacent track. None of these events were seen or observed by the grievor and crew, who, having secured the cars on the north end of the extension, returned to Symington with their locomotive engines running light. It was only the following day that a train movement clerk discovered the damage caused by the incident, said to total in excess of $120,000.00.

Upon a close review of the facts, the Arbitrator is satisfied that the grievor's conduct was deserving of a serious degree of discipline. The Arbitrator is compelled to conclude that the grievor did fail to adequately discuss the planning of the moves in question with his crew, failed to clarify his uncertainty as to the identity of the track into which he was pushing the empty cars, failed to take reasonable cognizance of the rail crossing over which the movement would be pushed, a hazard which can trigger a derailment when, as in the instant case, there was a buildup of ice and snow in the track flange way. Perhaps most seriously, he failed, as indeed he admits, to comply adequately with CROR rule 115, to ensure adequate vision of the lead unit of empties which he was placing into the spur.

The sole issue is the appropriate measure of discipline in the circumstances. In this regard there are factors to consider. The grievor is a long service employee with an exemplary record. It is not disputed

that in the twenty-four years of his service prior to the incident giving rise to the ninety day suspension assessed by the Company, Conductor Coutts had never once been disciplined for an infraction of any kind. Against that record the Council disputes two aspects of his treatment by the Company. Firstly, it questions the fact that Conductor Coutts was held out of service for a period of some eight days following the conclusion of his disciplinary investigation, pending the assessment of his ninety day suspension. Secondly, it submits that in light of his long service and record, a suspension of ninety days is excessive in the circumstances.

With respect to the quantum of penalty, the Arbitrator is compelled to give considerable weight to the submissions made by the Council. While there can be no doubt that infractions of the type committed by the grievor during the incident in question are serious, there is no suggestion in the material before the Arbitrator that his actions were in the nature of deliberate recklessness or a knowing disregard of the condition of the derailed car. The fact remains, however, that there was inadequate attention given to the condition of the crossing and the state of the lead car as it moved across it. Given the substantial damage caused by the grievor's admitted fault, the Arbitrator cannot disagree with the initial assessment of the Company, which was that the incident arguably involved a dismissable offence. I am therefore not prepared to disturb the Company's decision to leave the grievor out of service pending a final determination of the assessment of penalty to be made by the Company. Nor can I accept the submission of the Council's representative that the initial notice of investigation to the grievor was unduly vague or in contravention of article 117.1 of the collective agreement.

With respect to the ninety day suspension, however, the Arbitrator has concerns. The object of discipline is to bring home to the employee the seriousness of his or her actions, so as to have a suitable rehabilitative effect. When the amount of discipline is considered, adequate weight must be given to the grievor's prior record. In the instant case, considerable weight must attach to the fact that over twenty-four years of service as a trainperson and conductor, Mr. Coutts had never once been disciplined for an infraction of any kind. In that circumstance, while the Arbitrator accepts the position of the Company that the seriousness of the incident merited a suspension rather than the assessment of demerits, it is difficult to conclude that removal from gainful employment for a period of three months was necessary, or justified. In my view the assessment of a suspension for a period of forty-five days would have been sufficient in the circumstances.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor's record be amended to reflect a suspension of forty-five days for the infractions identified by the Company as relating to the incident of March 26, 1997 at Emerson Yard. He is to be compensated for the difference in wages and benefits for the period of forty-five days.

May 19, 1998 MICHEL G. PICHER

ARBITRATOR