

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2991

Heard in Montreal, Thursday, 15 October 1998

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

Appeal of discipline, forty (40) demerits which resulted in discharge for accumulation of demerits, assessed to Conductor D.G. Davies of Terrace, British Columbia effective March 06, 1998.

JOINT STATEMENT OF ISSUE:

On March 06, 1998 the grievor's train entered a foreman's work limits without permission. As a result the Company held an investigation on March 10, 1998 and as a result, the grievor was assessed 40 demerits and time held out of service for violation of CROR Rule 90(a) and CROR Rule 142(b) which resulted in a Rule 311(b) violation on March 06, 1998. In addition, the grievor was issued a Form 780 discharging him from service for accumulation of demerits effective March 06, 1998.

The Council's position is that the discipline of discharge is not warranted and in any event, excessive. The Council therefore requests that the discipline be mitigated to a lesser degree and further, the grievor be reinstated with full compensation without loss of seniority or benefits.

The Company disagrees.

FOR THE COUNCIL:

(SGD.) M. G. ELDRIDGE
FOR: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) R. RENY
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

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| R. Reny | – Labour Relations Associate, Pacific District, Vancouver |
| S. Blackmore | – Labour Relations Associate, Great Plains District, Edmonton |
| J. Dixon | – Business Partner, Pacific District, Vancouver |
| B. Laidlaw | – HR/LR Associate, LeVerendrye District, Winnipeg |

And on behalf of the Council:

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| D. Ellickson | – Counsel, Toronto |
| M. G. Eldridge | – Vice-General Chairperson, Edmonton |

AWARD OF THE ARBITRATOR

The material before the Arbitrator discloses, unfortunately, that Conductor Davies failed entirely to remain abreast of the location and movement of his train while operating on the Kitimat Subdivision on March 6, 1998. In the result, his train proceeded some three miles into the limits of a track occupancy permit held by Engineering Foreman Reiersen between mile 21 and mile 2.2 on the subdivision. It was only a radio call from the foreman which alerted the grievor and his crew that they had violated the protected work limits. Their train was immediately brought to a stop, and subsequently proceeded with the appropriate authorization from the foreman. Following the ensuing investigation the grievor, as well as Locomotive Engineer Sampson and Assistant Conductor Sexsmith, were assessed forty demerits each for their cardinal rules violations.

Upon a review of the evidence and submissions the Arbitrator cannot find any compelling mitigating circumstances to explain or diminish the responsibility of Conductor Davies for the very serious rules infraction which occurred in this case. But for the caution of the engineering foreman, the grievor's oversight could have had tragic consequences. His explanation that he was occupied doing paper work when his train entered the prohibited territory is tantamount to an admission of an abandonment of vigilance on his part, given that he was fully aware of the work limits and the restrictive train orders relating to the territory in question.

The grievor cannot claim to be a long service employee. Although he was hired in 1984, it is common ground that his service did have substantial interruptions, and that he returned to work under a re-employment contract dated May 9, 1997, the terms of which included the monitoring of his over-all work performance for two years following his return to active service, with further conditions in relation to attendance, the failure of which would render him liable to termination. Unfortunately within a short period of time the grievor was involved in a series of relatively serious incidents. He was assessed fifteen demerits for failing to properly secure a tank car on July 7, 1997, as a result of which substantial damage resulted to some six rail cars (**CROA 2989**). Shortly thereafter, on July 18, 1997 Mr. Davies caused the derailment of a rail car pursuant to a rules infraction while pushing cars into the storage track of an industrial customer (**CROA 2990**). The infraction which is the subject of this grievance, which is obviously more serious, followed some eight months later. The sequence of these events substantially calls into question the rehabilitative value of the prior discipline, or of the implicit warning contained within the grievor's re-employment contract of May 9, 1997.

Rules violations of the kind disclosed in this grievance have, for obvious reasons, been treated as among the most serious by the employer, as well as by this Office. Demerit assessments in the range of thirty to forty-five demerits are not uncommon for an infraction of this kind (see, e.g., **CROA 1627, 2124, 2377 and 2463**). In the result, I am not satisfied that the grievor's record, nor the circumstances of the culminating incident, justify a substitution of penalty. For reasons which he may best appreciate, Conductor Davies has failed, repeatedly, to demonstrate the requisite degree of care to discharge the obligations of a running trades employee in a safety sensitive position. For these reasons the grievance must be dismissed.

October 19, 1998

(signed) MICHEL G. PICHER
ARBITRATOR