

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3160
Heard in Calgary, Tuesday, November 14, 2000
Concerning
CANADIAN NATIONAL RAILWAY COMPANY
And
CANADIAN COUNSEL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)

DISPUTE:

The assessment of 20 demerit marks to Mr. D. Posthumous for his responsibility in regards to the side collision between CGTX 21446 and CITX 34975 on January 27, 2000, and his subsequent discharge for accumulation in excess of sixty (60) demerits.

JOINT STATEMENT OF ISSUE:

At approximately 16:30 on January 27, 2000, Mr. Posthumous, working as a yard conductor, was directed to remove CGTX 21446 from track CS58 and to place it in CH17. In order to accomplish this task, Mr. Posthumous and his assistant conductor proceeded to pull westward to set a loaded tank car onto track CS56 temporarily.

Once this movement was accomplished, Mr. Posthumous took control of the LCS (belt-pack) movement. As Mr. Posthumous proceeded eastward into track CS58, the car that had been temporarily kicked into track CS56 rolled westward and was in a side collision with the CITX 34975.

Mr. Posthumous attended a formal employee investigation on January 31, 2000 and was subsequently assessed the 20 demerit marks, which resulted in his dismissal for accumulation in excess of 60 demerit marks.

The Union contends that the discipline assessed and subsequent dismissal of Mr. Posthumous was excessive.

The Company disagrees.

FOR THE COUNCIL:

(SGD.) B. R. BOECHLER

FOR: GENERAL CHAIRPERSON

Appearing on behalf of the Company: S. Blackmore S. Michaud R. Reny

FOR THE COMPANY:

(SGD.) S. BLACKMORE

FOR: VICE-PRESIDENT, LABOUR RELATIONS

- Human Resources Associate, Edmonton
- Business Partner, Human Resources, Vancouver
- Human Resources Associate, Vancouver

R. Vallière - Superintendent, Edmonton Terminals

L. Rea - Transportation Officer, Edmonton

Appearing on behalf of the Council:

G. Kopp - Local Chairperson, Kamloops

R. Hackl - Vice-General Chairperson, Saskatoon

B. R. Boechler - Vice-General Chairperson, Edmonton

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not in dispute. On January 27, 2000 the grievor, Mr. D. Posthumous, was assigned as yard conductor performing switching in Walker Yard. Among the moves assigned to the grievor and his crew was the transfer of a loaded tank car onto track CS56, for a temporary period of time. Shortly after the movement was completed the car rolled in a westward direction, resulting in a side collision between itself and another loaded tank car. Following a disciplinary investigation the grievor was assessed twenty demerits for the incident. That discipline, coupled with his prior accumulated record of fifty-five demerits, resulted in his dismissal.

There can be little doubt but that the grievor was liable to a serious degree of discipline for his actions. By his own admission, he did not verify whether the tank car had coupled to other cars within the storage track, nor did he take any steps to secure the hand brakes of the car. His failure to apply hand brakes to the loaded tank car was in direct violation of GOI, section 3, item 61, and his general inattention in the circumstances constituted a violation of CROR rule 106(d), which mandates that crew members are responsible for the safe movement of equipment entrusted to them.

Regrettably, there are few elements to which the Arbitrator can look for the purposes of mitigating the penalty in the case at hand. Although Mr. Posthumous was initially hired in 1988, at first into the Engineering-Signals Communications Department, and worked in the Transportation Department after July of 1995, his

active service on duty, interrupted by layoffs, totalled little more than five years. As noted above, his disciplinary record stood at fifty-five demerits at the time of the incident giving rise to his termination. In addition, he had suffered a ten day suspension for a time-keeping infraction in August of 1999. In August of 1998 he was assessed fifteen demerits for violation of **CROR rule 115**, which also involved a side collision.

While the Council's representative submits that the Company did not follow progressive discipline in the handling of this matter, the Arbitrator cannot agree. The Brown system of discipline is designed to allow progressive measures to be brought to bear against an offending employee, by increments of demerits, thereby allowing for graduated warnings to the individual, up to the point of discharge at the accumulation of sixty demerits. Through 1998 and 1999 Mr. Posthumous incurred discipline on four separate occasions and knew, or reasonably should have known, that his employment security was at peril should he be subject to further discipline once his record reached fifty-five demerits in January of 1999. In addition, upon the further time-keeping infraction in August of 1999, the Company spared the grievor the consequence of discharge by assessing a suspension, rather than awarding demerits, which would have placed him in a dismissable position.

On the whole, the Arbitrator is compelled to conclude that the grievor was treated fairly by the Company under the Brown system of discipline. As the facts of the instant case disclose, Mr. Posthumous nevertheless continued to bring a questionable degree of care to the quality of his work. The incident resulting in his discharge, which involved a collision between two loaded tank cars, raises obvious concerns for safety and, given his prior record, calls into question the advisability of his continued employment. On the whole I am satisfied that the Company has established that it did have just cause to terminate the grievor's employment, and that there are no mitigating factors established which would justify a substitution of penalty in the circumstances.

For the foregoing reasons the grievance must be dismissed.

November 20, 2000

MICHEL G. PICHER
ARBITRATOR