

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3294**

Heard in Montreal, Friday, 11 October 2002

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
EX PARTE**

DISPUTE:

Conductor D.A. Butterworth was assessed 40 demerits for an incident which occurred on October 13, 2001.

COUNCIL'S STATEMENT OF ISSUE:

On October 26, 2001, Mr. Butterworth received discipline form 104 which stated:

... for failing to properly complete a thorough job briefing, for failing to ensure that the speed of your train was properly controlled at various locations between mileage 169.9 and mileage 107.3 on the Belleville Subdivision, resulting in your train exceeding the maximum permissible speed and for failing to ensure the speed of your train was properly controlled at the public crossing in the siding at Darlington, mileage 169.31 Belleville Subdivision, resulting in your train exceeding the maximum permissible speed. ...

The above discipline, combined with the assessment of 30 demerit marks issued to him on the same day resulted in Mr. Butterworth's dismissal.

The Union contends the evidence establishes CP Rail failed to act fairly and impartially in their decision to dismiss Mr. Butterworth on October 26, 2001. Furthermore, the Union asserts the Company failed to meet the required standard to substantiate the ultimate penalty of dismissal.

The Union requests all discipline assessed in the instance be expunged from Mr. Butterworth's record. Furthermore, Mr. Butterworth be reinstated into service with full seniority rights and compensation for all lost wages and benefits.

The Company has declined the Union's request.

FOR THE COUNCIL:

(SGD.) D. A. WARREN

GENERAL CHAIRPERSON

There appeared on behalf of the Company [among others]:

D. Freeborn - Labour Relations Officer, Calgary

D. E. Guérin - Labour Relations Officer, Calgary

And on behalf of the Council [among others]:

M. Russell - Counsel, Toronto

D. A. Warren - General Chairperson, Toronto

D. A. Butterworth - Grievor

At the request of the parties the Arbitrator adjourned the hearing and the matter was ultimately resolved between the parties.