CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3298

Heard in Calgary, Tuesday, 12 November 2002

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Ninety day suspension of Conductor L.D. Wonnick of Kamloops, BC.

JOINT STATEMENT OF ISSUE:

On June 17, 2001, Mr. L.D. Wonnick was working as conductor on train A41651 17. While travelling eastward on the CP Thompson Subdivision, train A41651 17 passed Signal 554 which was indicating stop.

Following an investigation into the incident, Conductor Wonnick was assessed a 90 day suspension for violation of CROR rule 429 at Basque, CP Thompson Subdivision, on June 17, 2001 while working as conductor on train A41651 17.

The Union contends that the discipline assessed to Conductor Wonnick is excessive as there were several mitigating factors which the Company has failed to consider.

The Company disagrees.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) B. R. BEOCHLER	**(SGD.) R. RENY**
for: GENERAL CHAIRPERSON	**MANAGER, HUMAN RESOURCES**

There appeared on behalf of the Company:

R. Reny	– Manager, Human Resources, Vancouver
S. Blackmore	– Manager, Human Resources, Edmonton
D. Kruk	– Counsel, Edmonton

P. Payne – Manager, Human Resources, Edmonton
K. Guiney – Manager, Human Resources,
J. Gosse – Transportation Supervisor,

And on behalf of the Union:
M. A. Church – Counsel, Toronto
R. Hackl – Vice-General Chairperson, Saskatoon
B. R. Boechler – Vice-General Chairperson, Edmonton
L. O. Schillaci – General Chairperson, UTU – CP Lines West, Calgary

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond dispute, that the grievor was responsible for a violation of CROR rule 429 at Basque on June 17, 2001. Inattention on the part of Mr. Wonnick resulted in his train passing through a stop signal by a distance in excess of three hundred feet. The only issue in the case at hand is the appropriate measure of discipline.

The Arbitrator can appreciate the rationale for the Company's assessment of a ninety day suspension. A cardinal rule infraction might well justify such a severe penalty in an appropriate case. In this case, however, there are substantial mitigating factors. The first is the longevity of the grievor's service, which dates from 1973. Significantly, in all of the grievor's years of service prior to the date of the incident at hand, he received discipline only twice. While it is true that both of those infractions involved serious breaches of operating rules, and the second, which involved the assessment of twenty-five demerits, occurred in April of 2001, there are nevertheless considerable equities suggesting that an employee of the demonstrated quality of Mr. Wonnick would benefit from the rehabilitative effect of a penalty short of a three month suspension, which amounts to a substantial financial hardship. Prior awards of this Office have noted that long discipline-free service is a compelling basis for the reduction of a ninety day suspension (e.g., **CROA 2161**, **2949** and **3005**). In some instances where the employees' records were virtually without discipline over a long period of service, ninety day suspensions were reduced to forty-five days.

That is the penalty which counsel for the Union urges in the case at hand. In the Arbitrator's view, however, the

grievor's record does not justify so great an adjustment as in the cases cited. The seriousness of the two rules infractions which are on the grievor's record cannot be ignored. In the circumstances, therefore, while I am satisfied that the discipline-free service rendered by Mr. Wonnick before 1994 is a significant mitigating factor, I am of the view that a reduction of the penalty to a sixty day suspension is more appropriate in the circumstances.

The grievance is therefore allowed in part. The Arbitrator directs that the grievor's record be corrected to reflect a suspension of sixty days for the violation of CROR rule 429 on June 17, 2001, and that he be compensated for wages and benefits lost in relation to the difference between that suspension and the suspension which was originally assessed against him.

November 19, 2002 **(signed) MICHEL G. PICHER**
ARBITRATOR