

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3422**

Heard in Montreal, Tuesday, May 11, 2004

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Assessment of a 60-day suspension to Conductor Charlie R. Harbottle of Kamloops, BS.

UNION'S STATEMENT OF ISSUE:

Charlie R. Harbottle was working as conductor on train 102 on December 5th, 2002 from North Bend to Kamloops. North Bend is a station on the CP main line. Conductor Harbottle reported for duty at Boston Bar where he received all the General Bulletin Orders pertaining to his train. He then proceeded to North Bend where he got on train 102 and headed for Kamloops. Shortly after departing, Conductor Harbottle was contacted by the CP RTC and advised that he was not in possession of a clearance.

Given that Conductor Harbottle did have all other required documents, Conductor Harbottle was not required to stop the train but to copy a clearance and continue to Kamloops.

Following the completion of the tour of duty, an investigation was conducted and Conductor Harbottle was assessed a 60-day suspension.

The Union submits that the assessment of a 60-day suspension to a long service employee whose record was free from discipline is unwarranted and, in any event, excessive. The Union suggests that this is a case where demerits would have been appropriate. Accordingly, the Union requests that the discipline assessed to Charlie Harbottle be substantially mitigated and that he be made whole for his losses.

FOR THE UNION:

(SGD.) R. A. HACKL

FOR: GENERAL CHAIRPERSON

There appeared on behalf of the Company:

S. Ziemer - Human Resources Manager, Vancouver

S. A. Macdougald - Human Resources Officer, Montreal

And on behalf of the Union:

M. A. Church - Counsel, Toronto

B. R. Boechler - General Chairperson, Edmonton

R. A. Hackl - Vice-General Chairperson, Edmonton

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied, on the basis of the material filed, that the grievor was deserving of discipline for having operated train 102 on December 5, 2002 without being in possession of a printed clearance. The Union does not dispute the error, but submits that the assessment of a two month suspension is an excessive degree of discipline in the circumstances. The sole issue, therefore, is the appropriate measure of discipline.

The Arbitrator is inclined to agree with the Union's position. As the Company quite properly argues, operating over a territory without the necessary clearances or track occupancy permits is among the most serious of infractions in railroading. For example, in **CROA 3006** the discharge of a conductor was sustained for exceeding a slow order and entering a foreman's work limits without authority. In that case the conductor, an employee with over twenty years' service, had a previous record of serious rules violations. In **CROA 2991** a conductor was assessed forty demerits for wrongfully entering a foreman's work limits, over which his train proceeded a distance of some three miles without proper authorization. The accumulation of demerits resulted in the termination of the conductor's employment, a result which was found to be justified given the extremely negative record compiled by the employee in question, as reflected in awards **CROA 2989** and **2990**. In **CROA 2291** the Office noted "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. Demerits 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**)."

It is trite to say that each case must fall to be determined on its own specific merits. In the case at hand it is important to note that the grievor did not operate his train without the proper authorization or clearance, nor did he do so without

being in possession of all applicable General Bulletin Orders. As noted in the Union's statement of issue, on the date in question Conductor Harbottle first reported for duty at Boston Bar where he was provided with the General Bulletin Orders relating to his train. He took those from the RIT machine in the yard at Boston Bar, although that machine was not able to provide him with the actual printed clearance for his train. It is common ground that that could only be obtained from CP's RIT machine in North Bend. The grievor then proceeded to that location where he verified his clearance on the RIT, identifying a GBO that was missing from the RIT machine in Boston Bar, and printing that document. He then had a complete set of GBOs, and knew from the RIT screen that he had a clearance to operate his train over the whole territory of his assignment. He forgot, however, to print the clearance document. It is common ground that he was required to do so. That document would have listed the various GBOs which controlled the movement of his train, all of which were in fact in his possession. It was only as Mr. Harbottle's train approached Drynoch that a rail traffic controller of CP, who was alerted by a fail safe system to the fact that the train clearance for train 102 had not been printed, that the grievor and his crew were notified of the shortcoming. They were then given a verbal clearance by the RTC and proceeded onwards without further incident.

The Arbitrator appreciates the cardinal importance of a train crew having full documentation with respect to the orders which govern the operation of their train. However, when regard is had to the general jurisprudence touched upon above, and the specific facts of the case at hand, I must agree that the assessment of a sixty day suspension, amounting to a wage loss in the order of \$16,000, was excessive on the facts of the case at hand. Firstly, unlike the conductors in the cases cited, the grievor never proceeded across any territory for which his train did not in fact have full authorization. Nor did he proceed in ignorance of any aspect of the instructions which would govern the movement of his train, as he was fully possessed of all relevant GBOs. In effect, the grievor committed an error, admittedly a serious error, by failing to print the train clearance form which he verified on the RIT machine at North Bend. While the Arbitrator does not necessarily agree with the Union's suggestion that a properly licensed motorist driving without his or her driver's license in his or her possession is the best analogy, it is significant to appreciate that the grievor's train was at all times authorized to perform the movements which it did, and on that basis alone the facts must

be distinguished from the cases cited above which involved the clearly unauthorized movement of trains.

A further mitigating factor to consider is the grievor's disciplinary record. While he is not without prior discipline, in close to thirty years of service Conductor Harbottle was disciplined on only three occasions for rules violations, each of them relatively minor. However, while I am satisfied that this is an appropriate case for a substitution of penalty, I am not fully persuaded that some period of suspension was not appropriate in the circumstances. Possession of a printed copy of the clearance form is obviously extremely important in the operation of any train. It is the governing document by which a train's crew can verify with precision the GBOs which govern the movement of their train. It was clearly not acceptable for the grievor to visually read the train clearance on the computer screen of the RIT at North Bend and to simply thereafter proceed on his way, with a full set of GBOs in hand. Conductor Harbottle's failure to operate his train in possession of the requisite printed documentation must be viewed as serious, and treated accordingly for the purposes of discipline. In the circumstances I am satisfied, given his length of service and prior disciplinary record, that the assessment of a fifteen day suspension would have been sufficient in the circumstances to have the necessary rehabilitative effect. The Arbitrator therefore directs that a fifteen day suspension be substituted, and that the grievor be compensated for the difference in wages and benefits lost.

May 17, 2004

(signed) MICHEL G. PICHER
ARBITRATOR