

Award No. 13

National Mediation Board

**Public Law Board
No. 6441**

Canadian National Railway

And

United Transportation Union (GTW)

Case No. 13

Claimant: D. Yeric

**For the Carrier: Myron Becker
Manager, Labor Relations**

**For the Organization: Bruce Wigent
Vice President, UTU**

**Presenter: Steven J. Thompson
General Chairman, UTU**

Neutral: Dr. James R. McDonnell

ISSUE

Claim for back wages, seniority rights, vacation rights and pay in lieu of fringe benefits account held out of service for failure to comply with the direct orders of his conductor on June 13, 2001 while working the 1000 hour #102 Post Assignment.

STATEMENT OF CLAIM

For restatement of Battle Creek Yard Conductor David Yeric and payment of all lost time, vacation entitlement, and RRB credits, and losses suffered due to the loss of his insurance coverage, after having been improperly dismissed by Mr. J. Robertson, Terminal Superintendent, per his letter dated July 20, 2001.

FINDINGS OF THE BOARD

The Board, upon the whole record and all evidence finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended ("RLA"); that the Board is duly constituted by agreement and has jurisdiction of the parties, claim and subject matter which was held on February 19, 2002 in Fort Lauderdale, Florida. The Board makes the following additional findings.

DECISION

The instant claim involves one of the most difficult yet important parts of workplace disputes. That is, the Carrier's right to direct the work place versus the employee's right to refuse the Carrier's direction because of his/her judgment that the direction will/might lead to an unsafe act. This issue has been and will be contested repeatedly in the years ahead. And it is this Board's view that it will be judged on a case-by-case basis since each incident will have its own facts and circumstances.

First, the Board notes the long and safe service of the Claimant. The record shows that he has served thirty-three (33) years without an injury; a commendable fact.

Second, we give value to the fact that safety is a prime motivator for the entire industry. Carriers across North America are devoted to and continuously train their employees to work safely. This industry is still plagued with too many injuries. And because of size, weight, speed and more, these injuries are too often more serious than strains and pains. They often involve life changing, if not life ending events.

Finally, the Board must weigh the evidence before us and decide, on balance whose judgment on the day in question should prevail.

Originally the Carrier discharged the Claimant from service, but later reduced the penalty to a reinstatement without pay which became a five (5) month suspension.

Following orders particularly in this industry (some have likened it to a paramilitary organization) is essential if not critical. Failure to follow a direct order will surely lead to errors, confusion and disasters of all descriptions. This is a right and responsibility which cannot be lightly taken from the Carrier. The one clear exception (the safety factor) is evident in the instant Claim.

Claimant believed in his mind and judgment that the movement of cars directed by his supervisor "might" be dangerous. He questioned the move; he had doubts. It was his "judgment call."

His Supervisor did not agree (his "judgment call") and ordered the move to take place. A collision of the minds, a conflict of judgment.

This Board concludes that on balance the Supervisor's judgment was more correct. The Claimant had little or no empirical evidence to support his theory and, therefore, must be found guilty of refusing an order.

The Board also concludes that the Carrier was too harsh in its selected penalty. The "punishment did not fit the crime," in the instant Claim.

For these reasons the Board makes the following Award.

AWARD

The Claimant shall be suspended for one (1) week for the Charges against him.

The Organization shall be held responsible for the delay in this matter and thereby deduct three (3) weeks from the original penalty of five (5) months and 1 day suspension.

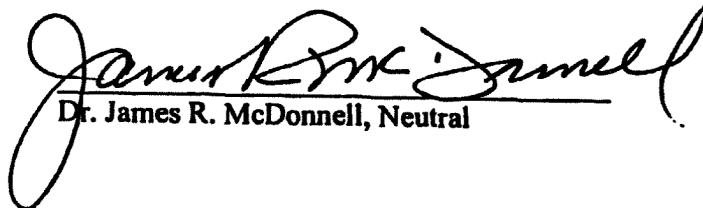
The Claimant will be made whole for four (4) months and one (1) day's pay and benefits.

All other charges, if any, shall be dismissed.



Bruce Wigent, Vice President, UTU

Myron Becker, Manager, Labor Relations
Canadian National Railway



Dr. James R. McDonnell, Neutral

July 8, 2002
Date

jdm