

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 560

Hearing at Montreal, Tuesday, September 14, 1976

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

DISPUTE:

Brotherhood claims that Highway Motorman E.P. Dawson was unjustly barred from operating tractor trailer units on highway and in city.

JOINT STATEMENT OF ISSUE:

Mr. Dawson operated a tractor-trailer unit that was subjected to jack-knifing on November 26, 1975 and December 3, 1975.

After investigation by the Company, Mr. Dawson was barred from operating tractor trailer.

Brotherhood claims violation of Article 8 of the agreement in that the discipline was improper and that the evidence does not support the discipline and further demands that Mr. Dawson be reinstated in his position as Highway Motorman and compensated for all loss wages.

The Company denied the Brotherhood's request and offered that the suspension should be lifted on December 6, 1976.

FOR THE EMPLOYEE:

(Sgd.) E. E. THOMS
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) S. T. COOKE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

A. D. Andrew – System Labour Relations Officer, Montreal
B. J. Lynch – Terminal Traffic Manager, Amherst
N. B. Price – Labour Relations Assistant, Moncton

And on behalf of the Brotherhood:

E. E. Thoms – General Chairman, Freshwater, P.B.,
R. Byrne – Local Chairman, Cornerbrook
M. J. Walsh – Local Chairman, St. John's

AWARD OF THE ARBITRATOR

Within a period of two weeks the grievor was involved in two serious jack-knifing accidents for which no other reasonable explanation appears than driver error. In my view, it was proper to take disciplinary action against the grievor. The major question in the case is as to the nature and extent of the discipline imposed.

The discipline in this case consisted of a restriction on the grievor performing certain work, namely the operation of tractor-trailer units. This restriction appears to have been for an indefinite duration. The effect of such a restriction is really to subject the grievor to a demotion to some lower-rated classification. As a general matter, demotion is not appropriate as a form of discipline. This question has been discussed in various cases, including **CROA Case No. 493** and the cases there cited. In that case it was considered that it took more than one instance of improper work to establish an incapacity to do that work. Here, two similar accidents in a short period of time suggest not so much incompetence, as perhaps an improper attitude with respect to the work of tractor-trailer operation. In this respect this case may be compared with **Case No. 525**, where the grievor, having been involved in three accidents over a short period of time, was restricted from all driving. This, it was held, was excessive, but it was considered that a lesser restriction was proper. That is, it was the type of situation in which the cause for discipline was improper work performance. This is not, it should be stressed a case of incompetence (for which one might be removed from work without any disciplinary connotations arising), but rather of blameworthy poor workmanship of a sort which suggests that a period of time away from that work would tend to correct the situation.

In the instant case the imposition of a permanent restriction was, as suggested above, and for the reasons given in **Case 525**, excessive. Where such a step is taken it may be that a vacancy is caused, the person filling such vacancy cannot be expected to yield the position to the former incumbent unless he had only held the position on a temporary basis. Thus the effect of the restriction may be to penalize the employee over an even longer period. The monetary loss suffered would appear to be substantial, and in all of the circumstances it appears to be that the proper course is to reduce somewhat the period of restricted driving of tractor-trailers imposed on the grievor.

It is my award, based on the material before me, that the imposition of a restriction on the grievor's driving was proper, but that such restriction should expire on October 1, 1976.

(sgd.) J.F.W. WEATHERILL
ARBITRATOR