CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 936

Heard at Montreal, Wednesday, April 14, 1982

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Demotion of Locomotive Engineer R. D'Anjou of Rivière-du-Loup, Quebec April 13, 1981.

JOINT STATEMENT OF ISSUE:

On April 6, 1981, Locomotive Engineer R. D'Anjou was employed as Engineman on Extra 9550 West, Freight Train No. 345, from Rivière-du-Loup to Joffre. A radar test of this train indicated that the speed limits were exceeded during the trip.

After conducting an investigation, Locomotive Engineer D'Anjou was demoted to permanent Brakeman for failing to comply with the regulation contained in the first paragraph of Item 6.6, CN Form 696, General Operating Instructions, while working as Engineman on Train No. 345, resulting in the speed limit being exceeded April 6, 1981.

The Brotherhood appealed the demotion on the grounds that it was excessive and too severe. Because of the General Chairman's strong appeal, the Company offered to restore the grievor in the classification of Locomotive Engineer in yard service. The grievor rejected the offer unless other conditions were included therein.

The Company declined the appeal.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) GILLES THIBODEAU	(SGD.) G. E. MORGAN
GENERAL CHAIRMAN	DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

P. J. Thivierge	– Labour Relations Officer, Montreal
R. Paquette	– Labour Relations Assistant, Montreal
J. P. Branson	– Regional Master Mechanic, Montreal
A. Gingras	– Trainmaster, Rivière-du-Loup,

And on behalf of the Brotherhood:

G. Thibodeau	– General Chairman, Montreal
J. Adair	– Vice-President, Ottawa
A. J. Ball	– General Chairman, Regina
J. Roberge	– Local Chairman, Charny
G. Hallé	– Legislative Representative, Charny
J. V. Mayer	– Local Chairman, Montreal
J. R. Proulx	– General Chairman, UTU (East), Quebec
R. D'Anjou	– Grievor

AWARD OF THE ARBITRATOR

It is clear from the Joint Statement of Issue that the only question with which I am concerned is the severity of the discipline assessed to the grievor. The fact that the grievor exceeded the authorized speed limits is not disputed. Were it disputed, however, I would conclude, with respect to all the evidence, that the grievor did exceed the speed limits with which he was familiar and whose importance he understood. There would, therefore, have been grounds for discipline.

Discipline must be assessed in relation to the employee's personal record and the circumstances of the incident, and with respect to the latter, no flagrant offence has been revealed but rather probable carelessness on the grievor's part. It remains nonetheless that this type of carelessness warrants discipline.

His personal record, however, is significant. Although the 45 total demerit marks meant that the grievor was risking dismissal, it should be noted that he had previously received demerit marks for the same type of offence, that is for exceeding the speed limit, receiving ten demerit marks for August 31, 1980 and ten demerit marks for February 2, 1981. If one accepts that a greater number of demerit marks is appropriate for a third repeated offence, then one concludes that this would result in dismissal. Instead of this, the employer saw fit to impose alternative disciplinary action, that is demotion.

I believe that the employer's decision tends to establish that there was no "harassment" or unfairness involved, as the union alleges. Moreover, this question is not disputed, as the Joint Statement of Issue reveals.

As a general rule, demotion would not be the appropriate discipline because it rather applies to cases of incompetence or incapacity (see **Case No. 715**). There are, however, difficult cases such as the one before us in which a repeated offence raises doubts as to the competence or qualifications of the individual in question. In the present circumstances, I believe the employer has imposed an inappropriate disciplinary measure by demoting the grievor to the status of permanent brakeman because with the exception of the three incidents described earlier, nothing tells me that the grievor was incapable of ably performing the duties of locomotive engineer.

Although demotion is not generally appropriate, I presume that it was preferable to dismissal here. The employer could, therefore have considered suspension or temporary demotion, and either measure, one would hope, would have made the grievor conscious of the seriousness of the situation and the need for him to improve his performance. In my opinion, the employer went too far in choosing permanent demotion and furthermore does not appear to have complied with the requirements of Article 116.3 of the Agreement in that the length of demotion is not specified.

For these reasons, I conclude that the discipline is unjustified and should be changed. In view of the time lapse since the incident, I order that the grievor be reinstated as locomotive engineer, subject to his passing an examination on the Uniform Code of Operating Rules. I further order that the grievor be compensated only as of April 19, 1982 in the event that he is not reinstated immediately.

A large part of the union's case had to do with the grievor's record, that is with its merits. However, one cannot dispute incidents that might have been or that were the subject of previous complaints. In addition, the employer should have the right to examine the record in detail. It may only be a question of a pure and simple record (of which the grievor, of course, was aware) that speaks for itself or not at all.

I shall not comment on the questions of "harassment" or discrimination which, as mentioned earlier, are not raised in the Joint Statement of Issue.

For the foregoing reasons and to the extent described above, the grievance is allowed.

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