

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 939

Heard at Montreal, Tuesday, May 11, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of 10 demerit marks assessed the record of Locomotive Engineer M.V. Bright of Toronto, Ontario.

JOINT STATEMENT OF ISSUE:

On September 11, 1980, Mr. M.V. Bright was employed as Locomotive Engineer on Extra 1252 West ordered MacMillan Yard, Toronto, Ontario for 2340 hours. On September 19, 1980, Locomotive Engineer Bright submitted a letter to the Company drawing attention to certain irregularities by the train crew during the trip of September 11, 1980.

An investigation was conducted and as a result, Locomotive Engineer Bright's record was assessed with 10 demerit marks for "violation of UCOR 106, Paragraph 2, Page 58 and UCOR General Rule E, Page ...".

The Brotherhood appealed the discipline on the grounds that it was too severe.

The Company declined the appeal.

FOR THE EMPLOYEES:

(SGD.) P. M. MANDZIAK
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) G. E. MORGAN
FOR VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. Birch	– Manager, Labour Relations, Montreal
M. Delgreco	– Regional Labour Relations Officer, Toronto
P. L. Ross	– Coordinator Transportation – Special Projects, Montreal
N. DelTorto	– Labour Relations Assistant, Montreal
K. L. Heller	– Assistant Superintendent, MacMillan Yard, Toronto

And on behalf of the Brotherhood:

P. M. Mandziak	– General Chairman, St. Thomas
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AWARD OF THE ARBITRATOR

Rule 106 provides generally that enginemen are responsible for the safety of their trains and the observance of the rules. General Rule E requires prompt reporting of any violation.

In the instant case, a number of rule violations were committed by members of the train crew on September 11, 1980. The grievor did not report these until September 19. It would appear, from his own statement, that the grievor made this report because of charges made by the conductor. That is, the report was filed to protect the grievor's own interests, and not simply because the rules required it. The grievor was, as he acknowledged, in violation of the rules by not making a prompt report. He was subject to discipline on that account.

In fact, however, the Company had knowledge of the events of September 11, and an investigation thereof was under way. The grievor's account of those events would be part of that investigation. While this might not relieve the grievor of responsibility to report its effect would appear, in this particular case, to make the filing of a report somewhat of a formality. In these circumstances, while some formal disciplinary step would be justified, no substantial penalty called for.

Accordingly, and having regard to the particular circumstance of this case, it is my award that the assessment of ten demerits be set aside, and a formal warning substituted therefor.

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