

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 940

Heard at Montreal, Tuesday, May 11, 1982

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### BROTHERHOOD OF LOCOMOTIVE ENGINEERS

#### **DISPUTE:**

Appeal of 30 demerit marks assessed the record of Locomotive Engineer M.V. Bright of Toronto, Ontario.

#### **JOINT STATEMENT OF ISSUE:**

On September 11, 1980, Locomotive Engineer M.V. Bright was ordered for 2340 hours for Extra 1252 West at MacMillan Yard, Toronto, Ontario. During this tour of duty, Trainman P.J. Mallinson reported that he had been injured while in the caboose.

An investigation was conducted and Locomotive Engineer Bright's record was assessed with 30 demerit marks for improper use of radio procedures, Form 696, Section 3.1, Paragraphs 2 and 7; improper brake test, Form 696, Section 17.3 and Section 17.9, Paragraphs 1, 2 and 5; and improper conduct resulting in personal injury to fellow employee and damage to Company property.

The assessment of 30 demerit marks resulted in the discharge of Locomotive Engineer M.V. Bright for accumulation of demerit marks.

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
K. L. Heller	– Assistant Superintendent, MacMillan Yard, Toronto
T. J. Thompson	– Trainmaster, MacMillan Yard, Toronto
D. Lawless	– Master Mechanic, MacMillan Yard, Toronto

And on behalf of the Brotherhood:

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

That the grievor used improper radio procedures is not in doubt. He acknowledged that the profanity he used was not acceptable. He would be subject to discipline on this account.

The grievor also acknowledged that he did not carry out the brake test required by Company regulations. At his investigation, the grievor explained his failure to follow the rules in this regard by saying "I had experienced the stopping ability of the train and did not pursue the matter any further". This, again, would be the ground of some discipline.

The most serious charge, in the instant case, is that of "improper conduct resulting in personal injury to fellow employee and damage to Company property". The "improper conduct" was that of rough handling of the train, being a rough lift of the train following an "OK to go" signal from the Conductor.

While the grievor, in his investigation, stated that his earlier acknowledgment of a rough lift was in error, and attributable to his being upset at the time, it is my conclusion, from all of the material before me, that the grievor did in fact perform a rough lift, being annoyed at the Conductor, with whom he had "a standing feud". The grievor – it is quite clear from his own answers at his investigation – knew the caboose had been coupled to his train, and in making a fast start, caused injury to the occupants of the caboose, and damage to the caboose itself.

For an Engineman to give vent to his own emotions in this way is clearly improper, whatever might be the justification for such emotions. This sort of conduct in the operation of a train is obviously very dangerous, and calls for substantial discipline. At the time of the incident the grievor's record stood at thirty demerits. There had been, in the period of approximately two years preceding this incident, some four occasions on which the grievor had been disciplined, on each occasion for an offence relating to train handling.

Having regard to all of the circumstances, it is my conclusion that the assessment of thirty demerits in respect of the several violations committed on the day in question, including especially that of rough handling of the train in anger, did not go beyond the range of reasonable disciplinary reactions to the situation. The grievance is therefore dismissed.

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