

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1116

Heard at Montreal, Tuesday, July 5, 1983

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### BROTHERHOOD OF LOCOMOTIVE ENGINEERS

#### DISPUTE:

Appeal of discipline assessed Locomotive Engineer B. J. Brooks, Hamilton, October 14, 1981.

#### JOINT STATEMENT OF ISSUE:

On October 14, 1981, Mr. B. J. Brooks was the in-charge Locomotive Engineer, on Train 251 operating MacMillan Yard to Hamilton. Train 251 passed a stop indication displayed by Signal 493S, Burlington West, Halton Subdivision, in violation of Rule 292, Uniform Code of Operating Rules.

Following an investigation, Locomotive Engineer Brooks was assessed 30 demerit marks for failure to properly supervise student engineer resulting in violation of Rule 292, U.C.O.R., at Signal 493S, Halton Subdivision, and failure to comply with the requirements of Rules 517 and 106, U.C.O.R. and Item 11, Section 17.1, General Operating Instructions, Form 696.

As a result, Locomotive Engineer Brooks was discharged for accumulation of demerit marks, effective November 10, 1981.

The Brotherhood appealed the assessment of 30 demerit marks on the basis that the penalty was too severe and thereby the resultant discharge.

The Company declined the appeal.

#### **FOR THE BROTHERHOOD:**

**(SGD.) P. M. MANDZIAK**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) D. C. FRALEIGH**  
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

H. J. Koberinski	– Manager, Labour Relations, Montreal
M. Delgreco	– Senior Manager, Labour Relations, Montreal
W. A. McLeish	– Manager, Labour Relations, Toronto
J. R. Church	– Superintendent, Western Ontario Division, London
J. A. Sebesta	– Co-ordinator, Transportation – Special Projects, Montreal
J. A. Alessandro	– Labour Relations Officer, Toronto

And on behalf of the Brotherhood:

P. M. Mandziak	– General Chairman, St. Thomas
C. R. Downey	– Vice-Chairman, Toronto

## **AWARD OF THE ARBITRATOR**

The grievor's train went through a stop indication. That is, in any circumstances, a serious offence. The grievor was not at the controls himself, but was instructing a student, who was actually operating the train. The grievor's responsibility for the movement is nevertheless clear, and he was subject to discipline for the violation, which he ought to have ensured – and could have ensured – did not occur.

The grievor made an emergency brake application about 680 feet from the stop indication, too late to prevent the violation. After the train had stopped, the grievor did not then comply with the rules requiring the issuing of a Mayday call and communication with the dispatcher. Rather, he simply backed up the train and waited for another train to clear. When the proceed indication appeared, the grievor then proceeded with his run. It may be noted that after the train had stopped, the dispatcher came on the radio and indicated that the train was "close to the signal". The grievor "agreed with him", but did not disclose the true state of events. That was a clearly improper omission.

Since the grievor had confidence that the student engineer could handle the train, and since, had he acted only a few seconds earlier, the grievor could have stopped the train before it passed the signal, it may be thought that the assessment of 30 demerits was too severe. When, however, the further offence, which included what can only be considered the hiding of the truth from the dispatcher, it is my view that the assessment of 30 demerits was not an excessive penalty in this case. The result was that the grievor had accumulated over 60 demerits, and that he was subject to discharge.

Since, as I find, there was just cause for the penalty imposed, the grievance is dismissed.

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