

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1224

Heard at Montreal, Tuesday, April 10, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of 10 demerit marks assessed the record of Yard Foreman L. C. Shaw, Sarnia, Ontario.

JOINT STATEMENT OF ISSUE:

On August 31, 1981, Yard Foreman L. C. Shaw sustained a personal injury while employed as Yard Foreman, 0630 Extra Yard, Sarnia Yard.

Following an investigation, Yard Foreman L. C. Shaw was assessed 10 demerit marks effective 31 August 1981 for violation of UCOR General Rule "M", resulting in personal injury, Sarnia Yard, 31 August 1981.

The Union appealed the assessment of 10 demerit marks on the grounds that it was unjustified.

The Company declined the appeal.

FOR THE UNION:

(SGD.) W. G. SCARROW
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

G. C. Blundell – System Labour Relations Officer, Montreal
D. W. Coughlin – Manager Labour Relations, Montreal
J. A. Sebesta – Co-ordinator Transportation - Special Projects, Montreal
J. H. Rousseau – Trainmaster, Sarnia
R. B. Jameson – Trainmaster, Toronto Union Station, Toronto

And on behalf of the Union:

W. G. Scarrow – General Chairman, Toronto
R. A. Bennett – General Chairman, Toronto
J. M. Kelly – Local Chairman, Sarnia

AWARD OF THE ARBITRATOR

The Company assessed the grievor ten (10) demerit marks for his alleged violation of UCOR General Rule "M" in failing "to exercise care to avoid injury to himself".

The grievor, Yard Foreman Shaw, while attempting to pull an operating lever on a car moving past him encountered some difficulty, The lever apparently had become stuck. This was described as a common occurrence at the yard. When the grievor pulled the lever a second time he experienced some pain in the lower part of his back. On the third attempt the grievor was successful in uncoupling the cars.

As a result of this incident the grievor was off work on Workman's Compensation for approximately two months.

Although the Company has every reason to be concerned about lost days or absenteeism due to injuries caused by the lack of care of its employees, I am not satisfied that the grievor has been shown to have violated UCOR Rule "M". No allegation was made that he was inadvertent or otherwise negligent in his efforts to uncouple the cars. Certainly no breach of operating procedures has been proven. The Company speculated that the grievor may have been "unbalanced" when he made his second effort to pull the operating lever. Speculation, however does not constitute an infraction. The uncontradicted evidence established, however, that the operating lever had become stuck. And it was this circumstance that contributed to the difficulty that the grievor encountered.

At most the Company should have admonished Mr. Shaw after he experienced pain to his back on his second attempt to uncouple the cars. He should not however have been disciplined. Rather than being indifferent to his duties the material before me has demonstrated the grievor's initiative in performing his tasks.

Since no infraction has been established the grievance is successful. The employer is directed to remove the ten demerit marks from the grievor's record.

(signed) DAVID H. KATES
ARBITRATOR