

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1286

Heard at Montreal, Wednesday, October 10, 1984

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS

#### **DISPUTE:**

Appeal of discipline assessed Mr. G. E. O'Brien of Vancouver, B.C.

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

On 2 August 1983 Mr. O'Brien operated a tow motor during the performance of his duties as a Stores Attendant 4. A Company supervisor observed Mr. O'Brien and questioned him on his manner of operating the tow motor.

After an investigation was held on 12 September 1983 the Company restricted Mr. O'Brien from operating a Company vehicle including fork lifts for eight months commencing 19 September 1983. The Brotherhood contends that the assessment of discipline was unwarranted and requests removal of the discipline and requests payment of the loss of earnings sustained by Mr. O'Brien while he was restricted by the Company. The Company has declined to remove this disciplinary restriction.

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

**(SGD.) TOM MCGRATH**  
NATIONAL VICE-PRESIDENT

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

**(SGD.) J. R. GILMAN**  
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS.

There appeared on behalf of the Company:

W. W. Wilson	– System Manager Labour Relations, Montreal
S. A. MacDougald	– System Labour Relations Officer, Montreal
M. Farmer	– Manager Employee Relations, CM&M, Montreal
L. E. Provencal	– Purchases & Materials Officer, Vancouver
M. M. West	– Shop Foreman, M.P., Surrey

And on behalf of the Brotherhood:

J. A. Craig	– Regional Vice-President, Vancouver
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## **AWARD OF THE ARBITRATOR**

At approximately 1000 hours on August 2, 1983, Mr. M. M. West Acting General Foreman, Thornton Yard Diesel Shop, observed the grievor, Mr. G. E. O'Brien operate his fork lift truck "in a reckless and damaging manner".

When Mr. West confronted the grievor with his inappropriate treatment of a Company vehicle he reacted by saying:

If they (his colleagues) expected him to be fast, he would indeed be fast and "F\*\*\* them all".

It is unnecessary for me to detail the manner in which the grievor was observed to have been abusing his fork lift truck. It suffices to say that the grievor denied the Company's allegation but offered no explanation as to why Mr. West would report the incident if his improper behavior did not transpire. Indeed, the statement attributed to the grievor at the time he was confronted by Mr. West is sufficiently inculpatory to remove any doubt that he committed the infraction for which he had been disciplined.

The only substantial issue raised in this case is whether the Company's penalty was just and reasonable. The Company initially assessed the grievor 10 demerit marks and restricted him from operating Company vehicles for a period of eight months. As a result the number of jobs for which the grievor could bid was drastically reduced.

During the grievance procedure the Company acceded to the Trade Union's request to remove the ten demerit marks from the grievor's record. The Company maintained a steadfast position that the eight month restriction on the use of Company vehicles should remain.

In having regard to the purpose that is served by the imposition of such temporary restriction on the operation of the Company vehicle I cannot conclude that the Company's decision should be upset. That is to say, if the objective of emphasizing that an appropriate standard of care be exhibited by the grievor in the use of a Company vehicle then Mr. O'Brien cannot help but have profited from the Company's action. For all the foregoing reasons the grievance is rejected.

**(signed) DAVID H. KATES**  
**ARBITRATOR**