

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1314

Heard in Montreal, Wednesday, December 12, 1984

Concerning

CANADIAN NATIONAL RAILWAYS

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of 30 demerit marks assessed the record of Trainman D.J. Kring of Hornepayne, Ontario, effective March 7, 1984 and subsequent discharge due to accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

On March 7, 1984, Mr. D.J. Kring was employed as Rear Brakeman on Extra 9494 West operating between Foleyet and Hornepayne. At Missonga on the Ruel Subdivision, Extra 9494 West passed Signal 166.1 displaying a stop indication without authority.

Following an investigation, the record of Brakeman D.J. Kring was assessed 30 demerit marks effective March 7, 1984 for:

Violation of Uniform Code of Operating Rules, rule 517, and General Operating Instructions CN Form 696, Items 3.2, 3.4 and failure to take positive action to ensure the proper operation and to control the speed of Extra 9494 West, March 7, 1984 which resulted in the violation of Uniform Code of Operating Rules, rule 292 at Signal 166.1 Missonga, Ruel Subdivision while employed as Rear Trainman.

As a result, Brakeman D.J. Kring was discharged, effective March 20, 1984, for accumulation of 80 demerit marks on his record.

The Union appealed the assessment of 30 demerit marks, and the resultant discharge on the grounds that it was not warranted.

The Company declined the appeal.

FOR THE UNION:

(SGD.) R. A. BENNETT
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) M. DELGRECO
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. W. Coughlin	– Manager Labour Relations, Montreal
J. B. Bart	– Labour Relations Officer, Montreal
J. A. Sebesta	– Coordinator Transportation, Montreal
G. G. Rosenbloom	– Transportation Control Officer, Montreal
K. P. Dejean	– Senior Transportation Engineer, Montreal
S. C. Thomas	– Trainmaster, Nakina.

And on behalf of the Union:

T. G. Hodges – Vice-General Chairman, Toronto
R. Byrnes – Secretary, General Committee, Toronto
W. G. Scarrow – General Chairman, Sarnia
D. Kring – Grievor

AWARD OF THE ARBITRATOR

This is a companion case to **CROA 1306** wherein a 40 demerit mark penalty assessed Locomotive Engineer Fex was sustained for his failure on March 7, 1984 to bring his train to a stop at signal 1661, Missonga, Ruel Subdivision and his subsequent failure to contact his dispatcher by radio to advise of his infraction. In that case it was alleged that UCOR rule 292 and General Operating Instruction CN Form 696, Item 3.4 were violated.

The grievor, Mr. D.J. Kring, was the brakeman assigned to the caboose of the train at the time of the incident. In addition to the UCOR infractions alleged in **CROA 1306** the grievor was also alleged to have violated UCOR rule 517 and General Operating Instruction, Item 3.2. For these alleged infractions, the grievor was assessed thirty demerit marks. In light of his past record, where the grievor had accumulated fifty demerit marks, the incident described herein was the culminating episode that resulted in the grievor's discharge.

During the course of the grievor's interview at the investigation of the allegations Mr. Kring had read to him each of the rules and regulations he had allegedly breached. At the interview he was in the company of his accredited Trade Union representative who presumably was present to protect the grievor's best interests. At the interview, the grievor acknowledged that he had infringed each of the rules for which the Company has held him accountable. I do not propose to recite the verbatim account of his admissions in the transcript other than to note that both the grievor and his accredited representative signed the transcript as being an accurate statement. Moreover, the grievor made the following remarks:-

I realize the seriousness of the matter under investigation and my current record is not as good as it should be. I also realize the discipline assessed from these rule violations could result in my dismissal. I entered the service October 28, 1970 as a sectionman and started as a brakeman in June 1975. I come from a 3rd generation railway family and have been proud to work for Canadian National Railways. I would ask for leniency in my case to prevent undue hardship to my family. If allowed to continue my service under any conditions, I will try my utmost to be a model employee.

The grievor, of course, was discharged and as a result he has referred the propriety of that penalty to CROA. At arbitration the Trade Union's basic strategy was to convince me that the UCOR rules allegedly violated by Mr. Kring at the time of the incident were not relevant to his position as brakeman on the train's caboose. The Trade Union representative went so far as to suggest that, except for the UCOR regulation governing the train's speed limit, the grievor had no responsibility for upholding the rules for which he was held accountable by the Company.

In responding to that strategy I must, with respect, state most emphatically that the Trade Union cannot have it both ways. On the one hand, the grievor cannot admit his culpability of the alleged rule infractions at his personal interview as a means of persuading the Company to treat his circumstance with leniency and then, reverse position when not treated leniently, and argue at arbitration that the grievor was not at fault and should therefore be exonerated of wrongdoing. An arbitrator is simply bound to weigh the grievor's admissions at face value and attribute appropriate credibility to them having regard to all the surrounding circumstances. In this regard, I am firmly convinced that UCOR rules for which the grievor did admit responsibility for violation are quite clearly relevant to the discharge of the brakeman's position on the caboose of a train.

Finally, it is also necessary that I allude to the Trade Union's allegations of improper conduct by the Company's representatives during the course of the grievor's investigation. At no time were these allegations mentioned in the grievance, or to the Company's representatives during the grievance procedure or at the time of the signing of the Joint Statement of Issue. As a result thereof, I am bereft of jurisdiction to deal with those allegations. But, more importantly, it seems to me that unless the Trade Union brings these alleged improprieties to the Company's attention in an appropriate manner, they cannot be expected to be treated seriously at arbitration. Accordingly, no weight can be attached to the flagrant innuendo that was directed towards the Company's representatives during this arbitration hearing.

As a result, because the grievor has voluntarily admitted to the infractions for which he has been disciplined and because of his mediocre personal record, I am compelled to sustain the discharge penalty. For all the foregoing reasons, the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR