

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1414

Heard at Montreal, Tuesday, October 8, 1985

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

#### DISPUTE:

Appeal of dismissal of Engine Watchman G. D. Duff of Winnipeg, Manitoba.

#### JOINT STATEMENT OF ISSUE:

On 2 July 1984 Engine Watchman Duff coupled diesel units on track DF2 at the Symington Diesel Shop. Two diesel units derailed during this coupling movement. After investigation the Company assessed twenty demerits to Engine Watchman Duff's record resulting in his dismissal.

The Brotherhood contends that Engine Watchman Duff bears no responsibility for the derailment and requests his reinstatement with payment of lost wages and without loss of seniority or benefits.

The Company disagrees and has declined the Brotherhood's request.

#### **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:

S. A. MacDougald – Labour Relations Officer, Montreal  
J. A. Cameron – Manager Labour Relations, Montreal  
R. Brasher – Shop Foreman, Winnipeg

And on behalf of the Brotherhood:

A. Cerilli – Regional Vice President, Winnipeg  
S. Young – Shop Steward, Winnipeg

#### **AWARD OF THE ARBITRATOR**

The Trade Union has conceded that the grievor violated Rules 4 and 15 of the Symington Diesel Shop Manual when he failed to take the necessary steps to prevent the collision of two train consists that resulted in a derailment. It is important to note that Engine Watchman Duff conceded his violation of the rules when he stated during the course of his investigative interview the following:

There was no visible space and nobody had informed me that incoming power had come in on that track or that the storage tracks were being used for incoming power and it is practiced by all hostler helpers all hostlers and to the Company as put out by the bulletin P-22-83 in the event to save time all units on the storage tracks will be tied on and only the East end unit will have brakes

on it. That way for switching purposes to the Company's benefit the helper doesn't have to walk 15 or 16 units. He can move a whole track by releasing the brake on the East end unit. You can move the whole track and switch out any unit you wish. Is the Company suggesting that we walk while there is 15 or 20 units on the tracks. Why have they not enforced it to everyone on every shift to date?

There is no doubt in my mind that the Company in its question was suggesting the very thing the grievor failed to do. His duty, if not under the rules, then by sheer common sense, was to perform an adequate investigation of the trackage before he cleared Hostler Wilcock to proceed to move his train consist. And indeed, the grievor was directly responsible for the collision and the consequent derailment in neglecting to take an obvious precautionary step. Had he done so then obviously he would have observed the other train.

The Trade Union suggested, however, that the grievor's lapse only merited ten (10) demerit marks. The Company agreed that ten demerit marks would have been appropriate had it been the grievor's first offence. In its view the grievor's shabby record of four incidents of a like nature over his three year employment history merited the twenty demerit marks that were assessed and that resulted in his discharge.

The Trade Union argued that three factors ought to be considered in support of my mitigating the penalty. The first pertained to the alleged violation by the departing crew of the 5000 train consist to adhere to the required procedures under Policy Bulletin No. P-22-83. That is to say, that crew should have coupled the train consist to the grievor's consist and released the brakes. Upon further consideration, however, the Trade Union conceded that this was not the responsibility of the train crew but the hostlers and engine watchman who were assigned to the DF trackage.

The second factor that I was asked to consider was the poor condition of the trackage. It was argued that failure by the Company to properly maintain the trackage contributed to the derailment.

Indeed, it was argued the grievor's violation would never have been disclosed had the tracks been maintained. It seems to me that this argument, when turned on its head, simply demonstrates the reason why strict enforcement of the rules are necessary. Surely, the immediate direct cause of the derailment was the grievor's omission to follow the required rules. The condition of the trackage, at best, may have contributed to the derailment. But, surely, that circumstance, if true, would not excuse or lessen the seriousness of the grievor's negligence.

Thirdly, it was argued that all engine watchmen in the Company's employ at the Symington Diesel Shop do not obey the rules. More specifically, they do not abide by Rules 4 and 15 because the Company condones their violation in order to save work time. It was submitted that if employees took the rules seriously (i.e., "worked to rule") no task would be completed. To support this argument a petition was circulated amongst the grievor's colleagues who confirmed that they regularly do not abide by the rules.

The Company denied this to be the case. It insisted that the rules are strictly enforced. Indeed, it was shown that regularly held seminars are attended by employees where they are later tested with respect to their knowledge and understanding of the rules. In fact, the grievor had recently been subject to such a test. In short, the objective evidence did not confirm the Trade Union's allegation. Moreover, the only conclusion that can be drawn from the employees' petition is that those employees who regularly violate the rules have simply not been caught.

In short, based on the evidence I have heard I have been convinced that the grievor's discharge, based on his abysmal record over a short period, is not only warranted but his disciplinary example may serve as a deterrence to future violation of the rules by other employees.

For the foregoing reasons this grievance is denied.

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