CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1517

Heard at Montreal, Wednesday, May 14, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed the record of Conductor T. G. Jones, London, Ontario and his consequent discharge due to the accumulation of demerit marks in excess of sixty.

JOINT STATEMENT OF ISSUE:

Mr. Jones worked as Conductor on Train 585 for the tour of duty commencing at 2300 on September 4, 1985. During this tour of duty, Train 585 lifted, from Track DJ62 at Beachville, two cars placarded as containing a Group 4 Dangerous Commodity and moved both cars to Woodstock. It was discovered later on September 5 that these two cars were not accompanied by the proper documentation.

Following an investigation, the record of Conductor T. G. Jones was assessed 10 demerit marks, effective September 5, 1985, for:

> Violation of Dangerous Commodities Regulations D2.1, D3.1, D4.0 and D5.1 as outlined in Supplement No. 1 to Timetable 51 while employed as Conductor on Train 585 designated Extra 4385 East, ordered for 2300 hours on 4 September 1985.

As a result, Conductor Jones was discharged for accumulation of demerit marks, effective October 23, 1985.

The Union appealed the matter on the grounds that the discipline was assessed unfairly and, in any case, this assessment and the resultant discharge was too severe.

The Company declined the Union's appeal.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) R. A. BENNETT	(SGD.) D. W. COUGHLIN
GENERAL CHAIRMAN	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
S. L. Pound	– System Transportation Officer, Montreal
M. H. LaChance	– Trainmaster, London
C. A. Wearing	– General Yardmaster (retired) London

And on behalf of the Union:

R. A. Bennett	– General Chairman, Toronto

AWARD OF THE ARBITRATOR

The Trade Union has conceded that the grievor committed an infraction by virtue of his failure to obtain the appropriate "Emergency Response Form" with respect to his tour of duty on September 4, 1985. That is to say, Conductor Jones was in violation of the Dangerous Commodities Regulations and was deserving of discipline. It is common ground that in light of the assessment of ten demerit marks for that infraction and his cumulative record of fifty-five demerit marks for previous incidents of misconduct the grievor was discharged.

The Trade Union submitted that the assessment of ten demerit marks for the infraction was "unfair" in light of the fact that neither the brakeman nor the locomotive engineer who were members of the grievor's train crew received any discipline for their alleged responsibility for the incident. In that regard the Trade Union has relied upon the pronouncements that were made in **CROA 1400**.

The second argument advanced by the Trade Union suggested that, in any event, the culminating incident, however serious, should not have warranted the grievor's discharge. The Trade Union did acknowledge that during the grievor's seven years of service with the Company his record was far from desirable. Indeed, the seven years of service was interrupted on two occasions by lay-offs.

On the first issue although I might, had the assessment of discipline been more than ten demerit marks, have been concerned about the Company's omission to discipline the grievor's colleagues on his crew. But as the Employer pointed out the grievor in his capacity as conductor was ultimately responsible for his crew's adherence to the Dangerous Commodities Regulations. And, in this context the instant situation should be distinguished from the facts in **CROA 1400**. In that case, the conductor went "scott free" by virtue of the Employer's breached time limit for the imposition of discipline whereas the grievor (who was a member of the crew and bore less responsibility for the infraction) was disciplined and ultimately discharged. In this case Mr. Jones, as conductor, in my view received a relatively mild penalty for his serious act of misconduct.

The second argument, simply put, suggests that the grievor should not have been discharged for a culminating incident that simply warranted ten demerit marks.

Of course, the doctrine of progressive discipline, as represented under the Brown's system, would suggest that the culminating incident, albeit triggering the grievor's discharge, merely "opened the gate" to the grievor's abysmal record. It demonstrated that the Company, notwithstanding its adherence to the doctrine of progressive discipline, has not been successful in correcting the grievor's deficiencies as an employee. Twelve incidents of misconduct are recorded on the grievor's record. Eight of these have resulted in the assessment of demerit marks totalling 55.

The one positive feature that I have discerned with respect to the grievor's record is that the last incident that resulted in the assessment of demerit marks occurred on September 18, 1984 when the grievor was in breach of a UCOR Rule. Aside from a written reprimand for failing to cover an assignment in November, 1984 the grievor's record has been relatively free for almost a one year period until the date of the culminating incident that occurred on September 5, 1985. In other words, there does exist some doubt in my own mind as to whether the grievor is so irredeemable as an employee that he should be denied one last chance.

I am prepared to give him the benefit of the doubt and direct his reinstatement without compensation effective the date of the receipt of this decision. In that regard, the ten demerit marks should be removed from the grievor's record and he shall be treated as being on suspension without pay for the period in question.

I shall remain seized for the purposes of implementation.

(signed) DAVID H. KATES
ARBITRATOR