

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1531

Heard at Montreal, Wednesday, June 11, 1986

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Appeal of discipline assessed the record of Yard Foreman J. D. Cornelius, Hamilton, Ontario, effective March 13, 1985, and his consequent discharge due to the accumulation of demerit marks in excess of sixty.

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

On March 13, 1985, Mr. Cornelius worked as Yard Foreman on the 2230 Oakville Yard Assignment. During this tour of duty, Mr. Cornelius' assignment was involved in a side collision.

Following investigation, Mr. Cornelius' record was assessed 20 demerit marks for:

Failure to comply with the requirements of UCOR 112, paragraph 1, resulting in side collision and damage to cars TTBX 962173 and TTKX 907946, while employed as Yard Foreman on 2230 CN Yard Assignment, Oakville Yard, 13 March 1985.

As a result, Mr. Cornelius was discharged, effective April 9, 1985, for accumulation of demerit marks.

The Union appealed the assessment of 20 demerit marks and the resultant discharge on the grounds that it was too severe.

The Company declined the appeal.

#### **FOR THE UNION:**

**(SGD.) CLAUDE CLEMENT**

**FOR: GENERAL CHAIRMAN**

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

**(SGD.) M. DELGRECO**

**FOR: ASSISTANT VICE-PRESIDENT LABOUR RELATIONS**

There appeared on behalf of the Company:

J. B. Bart – System Labour Relations Officer, Montreal  
D. W. Coughlin – Manager Labour Relations, Montreal  
M. C. Darby – Coordinator Transportation, Montreal  
J. D. Roberts – Trainmaster, Toronto

And on behalf of the Union:

W. G. Scarrow – General Chairman, Sarnia  
R. Arnott – Local Chairman, Hamilton

## **AWARD OF THE ARBITRATOR**

The grievor was assessed 20 demerit marks for violation of the requirements of UCOR 112, paragraph 1 when he failed to secure a tri-level rail car with a handbrake while working in the capacity of yard foreman.

At the time of the incident the grievor had accumulated fifty demerit marks that involved incidents of misconduct relating to like violations of the UCOR rules.

To clear up one contentious point raised in the Trade Union's brief, I am of the view that article 4(a)(i) of Addendum 41 enables the Company to consider incidents of misconduct up to 5 years prior to the culminating incident in its assessing of discipline. Accordingly, even if, through operation of the Brown's System, demerit marks have been removed from the grievor's record of previous incidents of misconduct, article 4(a)(i) still directs their viability until the 5 year time limit has expired. Article 4(a)(i) reads as follows:

- (i) in determining corrective action only the employee's discipline record of the last five years prior to the incident under investigation will be considered.

The Trade Union has not contested the grievor's violation of the UCOR rule as alleged.

The Trade Union insisted, however, that the grievor was never properly trained as a yard foreman. As such, he lacked the competence to fulfill all the duties of that position. This shortcoming resulted in the rash of UCOR violations that permeated his mediocre personal record.

It was therefore suggested that demoting the grievor to the restricted duties of a yard helper would be a more appropriate disciplinary penalty that was assessed him arising out of the imposition of 20 demerit marks for the culminating incident.

The fallacy in the Trade Union's position, of course, is that the vast majority of the grievor's past infractions of the UCOR rules occurred while he was a yard helper. The truth of the matter is the grievor's previous infractions were caused by his own carelessness. And whether he is employed as a yard foreman and/or a yard helper his past record demonstrates a pattern of carelessness that makes future misconduct of a similar nature highly likely.

For that reason I cannot hold the Company's response to the grievor's latest infraction of the UCOR rules was not appropriate. The grievor has shown himself to be an unreliable employee who merited the penalty of discharge.

For all the foregoing reasons the grievance is denied.

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