

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1550

Heard at Montreal, Thursday, July 10, 1986

Concerning

### ALGOMA CENTRAL RAILWAY

and

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Claim of the Organization with respect to discipline assessed to Trainman William J. Bain for incident that occurred on August 17, 1985.

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

Trainman William J. Bain, regularly employed in Roadswitcher Service, was assessed discipline of 10 demerit marks for violation of UCOR Rule 112, 3rd paragraph, during tour of duty as Conductor in charge of Train Extra 101 West, Saturday, August 17, 1985, resulting in considerable damage to Algoma Ore Division property and to Caboose 9519.

The Organization requested the Company to remove the discipline from Trainman Bain's record for the following reasons: (1.) there were no warning signs; (2.) other employees involved were not disciplined; (3.) Mr. Bain was not in direct control of the movement; (4.) the two trainmen were away from the area for several years, therefore the Company was not in compliance with Article 80.

The Company declined the request of the Organization.

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

**(SGD.) J. SANDIE**  
GENERAL CHAIRMAN

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

**(SGD.) V. E. HUPKA**  
FOR: VICE-PRESIDENT - RAIL

There appeared on behalf of the Company:

V. E. Hupka – Manager, Industrial Relations, Sault Ste. Marie  
N. L. Mills – Superintendent, Sault Ste. Marie

And on behalf of the Union:

J. Sandie – General Chairman, Sault Ste. Marie

## **AWARD OF THE ARBITRATOR**

The grievor admitted his violation of UCOR Rule 112, third paragraph, for the incident described in the Joint Statement of Issue as follows:

I accept the conclusion reached by the Company in this incident but reserve the right to appeal any discipline which may result in accordance with the provisions of Article 112 of the collective agreement.

Signed: "William Bain" August 23/85

The only issue before me is whether the grievor's 10 demerit mark penalty should be reduced to a letter of reprimand as advocated by the Trade Union.

There were two arguments put forward by the Trade Union that has convinced me that some adjustment to the penalty is warranted.

Firstly, I am satisfied that, despite the grievor's status as conductor in charge of the train, his train crew also owed some obligation to exercise caution in avoiding the accident (and the consequent violation of the UCOR rules) during the course of the operation of their train. Both brakemen Kennedy and Knox were not assessed any discipline arising out of this particular incident. This was an oversight on the Company's part that simply has had an effect on my view of the grievor's treatment for disciplinary purposes.

Secondly, the Company admitted its delinquency in failing to post a restrictive sign in the vicinity of the accident advising train crews of the hazard. Although I accept the Company's explanation that the area was familiar to the grievor it nonetheless does not excuse its laxness in taking reasonable measures to avoid such incidents.

As a result of the foregoing, the grievor's penalty is directed to be reduced from 10 to 5 demerit marks.

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