CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1567

Heard at Montreal, Wednesday, October 15, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed Yardmaster G. G. Glidden, MacMillan Yard.

JOINT STATEMENT OF ISSUE:

On June 10, 1983, Mr. Glidden worked as Yardmaster on the 0700-1500 West Control Assignment at MacMillan Yard and was responsible for yard operations in "W" (West Departure) Yard.

At 0913, cars being pushed by the 0715 Dual Control yard assignment collided with cars standing in Track 2 in W Yard resulting in the derailment of seven cars plus damage to two others.

Following investigation, the record of Yardmaster Glidden was assessed 25 demerit marks for:

> Failure to properly give track designation for movement into West Departure Yard resulting in collision and subsequent derailment on 10 June 1983, MacMillan Yard.

The Union appealed the discipline assessed on the grounds that it was not warranted.

The Company declined the appeal.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) W. G. SCARROW	(SGD.) D. C. FRALEIGH
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS.

There appeared on behalf of the Company:

J. B. Bart	– Labour Relations Officer, Montreal
M. C. Darby	– Coordinator Transportation, Montreal

And on behalf of the Union:

W. G. Scarrow	– General Chairman, Sarnia
J. F. O'Brien	– Vice-General Chairman, London
P. G. Gallagher	– Local Chairman, Niagara Falls

AWARD OF THE ARBITRATOR

The evidence establishes that on June 10, 1983, the grievor was employed as West Control Yardmaster in the Company's Toronto freight yards on the 0700-1500 shift. At approximately 8:30 A.M., Mr. Glidden was advised that some 74 cars, including container cars and hopper cars, would be placed in the north end of the west control departure yard, to be furthered on train No. 415. Mr. Glidden advised the General Yardmaster that track W-2 would be available for the placement of the cars in question. In so doing so, however, he overlooked his prior knowledge of

the fact that the track in question already contained a number of cars, including automobile transport cars and a caboose, and did not have sufficient capacity to further accommodate the additional 74 cars whose placement he had approved. When he realized his error Mr. Glidden attempted several urgent telephone calls to attempt to stop the shunting of the cars on track W-2. He was too late, however.

As a result of his error a substantial collision and derailment ensued. At approximately 9:13 A.M., the head car of the 74 being shoved by a yard locomotive collided with the cars already standing in track W-2. The caboose was demolished and the car ahead of it derailed. The three leading cars of the 74 were also derailed, further striking and derailing two other cars in the adjacent track and sideswiping two others. A container on a derailed flat car was ripped open, causing the spillage of approximately one hundred gallons of a highly toxic insecticide, known commercially as Aldrin. This is a dangerous commodity classified as a poisonous substance pursuant to regulations of the Canadian Transport Commission. In the result the area was evacuated while the spill was cleaned up, causing the north half of W Yard to be out of service for over thirty hours, with tracks W-1 to W-3 non serviceable for a greater aggregate of fifty-one hours. The cost of destroyed equipment and the clean-up exceeded $235,000.00.

The Union does not dispute that the grievor was deserving of some discipline. It submits, however, that in the circumstances the imposition of discipline on the grievor alone is discriminatory. Specifically it maintains that the yard crew responsible for moving the 74 cars also had an obligation to see the potential problem on track W-2 and to bring those cars to a stop before any damage occurred. That submission is disputed by the Company.

The issue turns entirely on the interpretation of Rule 103 of the Uniform Code of Operating Rules, prescribed by the Board of Transport Commissioners for Canada, which provides:

> When cars are pushed by an engine, except when switching or making up trains in yards, and even then, when conditions require, a member of the crew must be on the leading car and in a position from which signals necessary to the movement can be properly given.

It is common ground that in the instant case the crew making up train No. 415 on track W-2 did not place a crew member on the leading car. On the facts the Arbitrator must accept the submission of the Company that the circumstances fell within the exception described within the Rule. It is not disputed that the crew was making up a train within the meaning of the Rule, a circumstance in which the need for a crew member on the leading car is generally eliminated. The more narrow issue is whether the facts at hand fall within the phrase "even then when conditions require ..." so as to bring this case outside the exception.

The Arbitrator can find nothing in the language of the Rule, in the facts or in the jurisprudence cited to support the conclusion that it does. It is not disputed that as West Control Yardmaster the grievor had full access by means of a computer at his desk, to the number of cars standing on each track within his section of the yard. That, in part, is why he is authorized to give clearance when he receives a request to accept a cut of cars within his section of the yard. In normal circumstances, and on the evidence there was nothing abnormal on the day in question, employees working on a crew responsible for moving cars within that particular yard are entitled to assume that the Yardmaster has full knowledge of the state of a track at any given time. This is not a circumstance in which conditions exceptionally require a member of a crew switching or making up a train to be on a leading car. Nor is this situation caught by the language of Rule 108 which mandates that if there is any doubt the safer course must be taken.

In the Arbitrator's view the facts at hand are not analogous to those found in a number of cases cited by the Union, including **CROA 1400, 1312, 905, 482** and **180**. In light of the finding that there was no obligation on the part of the crew to maintain a crew member on the leading car, there is no failure of performance established on the part of any other employee that would have justified their discipline. Consequently no case of discrimination is made out.

The evidence establishes a grave error of judgment on the part of the grievor, which caused a serious accident with substantial consequences, both in respect of safety and economic loss. In the circumstances the assessment of twenty-five demerit marks is within the range of appropriate disciplinary response. For the foregoing reasons the grievance is dismissed.

(signed) MICHEL G. PICHER
ARBITRATOR