

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1583

Heard at Montreal, Thursday, November 13, 1986

Concerning

**CANADIAN PACIFIC LIMITED**

and

**UNITED TRANSPORTATION UNION**

### **DISPUTE:**

The assessment of 30 demerit marks to Trainman P. A. Lafleur, Coquitlam, B.C., for his involvement in the VIA No. 2 passenger train derailment on February 23, 1985 at Mile 1.4 Mission Subdivision and subsequent dismissal for accumulation of demerit marks.

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

On February 23, 1985, a derailment of VIA Passenger Train No. 2 took place at Mile 1.4, Mission Subdivision, Matsqui, B.C. Subsequently, Mr. Lafleur's responsibility in this derailment was investigated and discipline was issued in the amount of 30 demerit marks. This, combined with the already existing discipline on Mr. Lafleur's record of 40 demerit marks culminated in his dismissal for an accumulation of demerits in excess of 60.

The Union contends that there were mitigating factors which should have been taken into consideration by the Company in the assessment of discipline. The discipline issued was too severe and should be reduced thereby enabling the reinstatement of Trainman Lafleur to Company service in his previous position of Trainman.

The Company contends that the discipline issued was warranted and has rejected the appeal from the Union to have the discipline reduced and reinstate Trainman Lafleur.

### **FOR THE UNION:**

**(SGD.) J. H. MCLEOD**  
GENERAL CHAIRMAN

### **FOR THE COMPANY:**

**(SGD.) L. A. HILL**  
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

R. T. Bay                      – Assistant Supervisor Labour Relations, Vancouver  
B. P. Scott                     – Labour Relations Officer, Montreal

And on behalf of the Union:

L. O. Schillaci                – Vice-General Chairman, Calgary  
J. H. McLeod                  – General Chairman, Calgary

## **AWARD OF THE ARBITRATOR**

It is not disputed that the grievor violated Rule 104 of the Uniform Code of Operating Rules. When performing his duties as Rear Brakeman on VIA Passenger Train No. 2, on February 23, 1985 Mr. Lafleur lined a switch at a point in time after the front wheels of the rear car, the Algonquin Park, had cleared the switch, but before the rear wheels had done so. As a result the car was derailed although, fortunately, it did not overturn and no one was injured. It is clear that Brakeman Lafleur did not stand on the opposite side of the track, as required, or alternately did not stand at a minimum of twenty feet from the switch. His actions constituted a grave error with a serious consequences which could, in other circumstances, have been tragic.

The Union submits that there are mitigating circumstances. In particular it cites the fact that the grievor had previously suffered a period of lengthy emotional and psychiatric problems. It is common ground that he was on medical leave of absence for these reasons for approximately one year, returning to work on December 22, 1984. It also appears that shortly after his return to work he was held out of service for a period of time during which accusations of incompetence made against him by fellow employees were investigated. Those charges were not substantiated, and he was returned to service in February of 1985.

As unfortunate as the grievor's personal circumstances may be, his interests as an employee must be balanced with those of the Company, whose first obligation is to operate a safe and efficient rail service. The material before the Arbitrator demonstrates the Company's fullest efforts to accommodate Mr. Lafleur's medical problems. In May of 1984, after a period of five months of treatment, the Company was advised by a psychiatrist that the grievor could return to work. Notwithstanding that advice, the grievor requested further time to overcome what he described as emotional problems and an inability to concentrate. This was granted, and his leave of absence was extended to December 22, 1984.

This is not, in the Arbitrator's view, a circumstance in which the Company has been insensitive to the genuine health needs of an employee. On the contrary, it manifested an enlightened and understanding attitude, giving Mr. Lafleur every opportunity to achieve full rehabilitation before returning to work. In light of the serious mishap of February 23, 1985, the Arbitrator finds it difficult to disregard the Company's grave concerns for the safety of its employees and passenger should Mr. Lafleur continue in his employment. While it is true that the grievor has had only three instances of discipline, discounting the grievor's lengthy leave of absences, these have risen in little more than two years of active service. In all the circumstances, I must conclude that the imposition of 30 demerit marks upon Mr. Lafleur for the culminating incident is within the appropriate range of discipline, (See **CROA 353**). For these reasons the grievance must be dismissed.

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**