

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1627

Heard at Montreal, Thursday, February 12, 1987

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Appeal of discipline assessed the record of Conductor R. E. Powell, Trainmen S. B. Jennings and R. M. Lever effective 9 November 1984, and subsequent dismissal of Trainman R. M. Lever, effective 30 May 1986.

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

On 9 November 1984, Conductor R. E. Powell and Trainmen B. S. Jennings and R. Lever manned Extra 4577 operating between Petrolia Junction, Mileage 46.3 Strathroy Subdivision and Watford. Among the train orders issued to Work Extra 4577 was Train Order No. 151, a Form H Example 6 train order, authorizing Work Extra 4577 to operate on both tracks between the hours of 0730 and 1700 between Blackwell and Kerwood. Work Extra 4577 continued to operate on the eastward track after the expiration of Train Order No. 151 at 1700 hours. Following an investigation the record of Conductor R. E. Powell was assessed 50 demerit marks and the records of Trainmen R. Lever and B. S. Jennings were each assessed 35 demerit marks.

As a result of the Union's appeal, in **CROA 1475**, the discipline assessed each of the grievors was ordered removed from their record on the ground that the grievors were denied a fair and impartial investigation. Following a subsequent investigation in relation to the same incident the record of Conductor R. E. Powell was re-assessed 50 demerit marks and the records of Trainmen B. S. Jennings and R. Lever were re-assessed 35 demerit marks effective 9 November 1984. As a result of the re-assessment of 35 demerits, Trainman R. Lever was discharged effective 30 May 1986 for accumulation of demerit marks.

The Union appealed the discipline assessed each of the grievors on the grounds that the discipline could not be re-assessed subsequent to such discipline being removed through arbitration; the discipline was not warranted and in any case was too severe. The Union appealed Trainman Lever's discharge on the additional ground that his record was not properly and accurately calculated.

The Company declined the appeal.

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

**(SGD.) R. A. BENNETT**  
GENERAL CHAIRMAN

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

**(SGD.) D. C. FRALEIGH**  
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS.

There appeared on behalf of the Company:

J. B. Bart	– Labour Relations Officer, Montreal
D. M. Coughlin	– Manager Labour Relations, Montreal
M. C. Darby	– Coordinator Transportation, Montreal
T. N. Wilson	– Assistant Manager Rules, Montreal

And on behalf of the Union:

R. A. Bennett	– General Chairman, Toronto
G. E. Butt	– Local Chairman, Sarnia
W. G. Scarrow	– General Chairman, Sarnia
L. H. Olson	- Vice-General Chairman, Winnipeg
B. Leclerc	– General Chairman, Quebec
R. Byrnes	– Secretary, General Committee of Adjustment, Toronto

### **AWARD OF THE ARBITRATOR**

It is not disputed that the actions of the grievors constituted a serious rules infraction. I find it difficult to accept the argument of the Union that the discipline issued to Conductor Powell should be the same as that meted out to the Train Dispatcher, being 40 demerits. While it is true that their degrees of responsibility for the lack of a train order were relatively equal, the Conductor must also be held responsible for the excessive speed of the train.

Nor can the Arbitrator find that the penalty assessed against the grievor Jennings was outside the appropriate range of discipline. In the circumstances, however, and having particular regard to his inexperience in road services, it is appropriate to make some adjustment in the discipline of Trainman Lever. He should therefore be reinstated in his employment, without compensation or benefits, and without loss of seniority, with his record to stand at 50 demerit marks. Needless to say, any further rules violation by Mr. Lever may have the most serious of consequences.

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