

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1635

Heard at Montreal, Tuesday, April 14, 1987

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Appeal the severity of the discipline of 25 demerit marks and subsequent discharge for accumulation of demerit marks assessed the record of Train Dispatcher A.G. Quesnel of Belleville, Ontario, effective 3 June 1985.

JOINT STATEMENT OF ISSUE:

At 1518 hours on May 8, 1985, Train Dispatcher Quesnel authorized a clearance to Extra 9568 East with Train Order Nos. 36 and 593. At 1539 hours, Mr. Quesnel voided the clearance for Extra 9568 East as it was discovered that a Train Order (no. 22) had been omitted when the clearance was originally authorized. At 1540 hours, a new clearance was authorized which included Train Order Nos. 22, 36, and 593. As well, the Train Order book had been altered subsequent to the original clearance for Extra 9568 East being authorized.

Following an investigation into the incident, Mr. Quesnel's record was assessed 25 demerit marks which resulted in his discharge for accumulation of 75 demerit marks.

The Union contends the discipline assessed was too severe and Mr. Quesnel should be reinstated as a Train Dispatcher without any loss of earnings, benefits or seniority.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) PETER P. TAVES
SYSTEM CHAIRMAN

FOR THE COMPANY:

(SGD.) JUNE P. GREEN
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

M. M. Boyle	– System Labour Relations Officer, Montreal
W. W. Wilson	– Manager Labour Relations, Montreal
S. F. McConville	– System Labour Relations Officer, Montreal
T. N. Wilson	– Assistant Manager Rules, Montreal
D. A. Stewart	– Relief Trainmaster, Kamloops

And on behalf of the Union:

P. Taves	– System General Chairman, Winnipeg
R. Leclerc	– System General Vice-Chairman, Montreal
D. Dougherty	– Accredited Representative, Belleville

AWARD OF THE ARBITRATOR

The material establishes beyond dispute that Train Dispatcher Quesnel failed to deliver a train order when authorizing a clearance to Extra 9568 East on May 8, 1985. It is also clear that as soon as he was aware of his error he took steps to correct it and did not ultimately seek to conceal or cover it up. It is common ground that the train order in question, respecting instruction and speed restrictions pertaining to the handling of an unrestricted dimensional load is no longer necessary, as a result of directives issued after the events in question. It is also common ground that the grievor's error did not create a situation of peril. Although no immediate danger was created and no harm to persons or equipment resulted from the grievor's actions, the Arbitrator must accept the Company's characterization of his error as reflecting a lack of care which could, in other circumstances, have resulted in far more serious consequences.

The fundamental issue in this case is the appropriate measure of discipline. In this regard, the grievor's record gives some cause for concern. In April of 1983 he was discharged for an accumulation of 70 demerits, a substantial part of which involved rules violations. These included a culminating incident which caused a collision between a train and a heavy track unit. That discharge was compassionately reduced to a reinstatement with 30 demerits in December of 1983. Notwithstanding that, on December 13, 1984, Mr. Quesnel was again assessed 20 demerits for a rules infraction involving train movements. As a result, prior to the events of May 8, 1985 his disciplinary record stood at 50 demerits.

The grievor is 53 years of age and has been employed by the Company since July of 1952. Initially hired as an Operator, he was first promoted to a Relief Train Dispatcher in January of 1964. While in the Arbitrator's view the grievor's record gives some cause for concern, his 33 years of service to the Company cannot be entirely disregarded, particularly in light of the nature of the culminating incident. While it is not disputed that omitting the train order in question was a failure of his obligation, it did not create a situation of extreme danger such as found in prior cases considered by this office (See **CROA 371, 880 and 1592**). In the Arbitrator's view the severity of that particular infraction is in some degree reflected by the fact that although the grievor's supervisor, Chief Dispatcher Meagher, became aware of the grievor's failure to deliver the train order substantially in advance of Mr. Quesnel's own realization of his mistake, Mr. Meagher made no attempt to rectify the situation, or to bring it to the attention of either the grievor or any employees in the field. The grievor's error obviously did not provoke any pressing concern in the mind of his supervisor.

In the Arbitrator's view the equities of the case are closely balanced. While the Company's concern over the grievor's performance as a Train Dispatcher in recent years is not without foundation, the circumstances of the culminating incident and the value of Mr. Quesnel's long service to the Company must also be taken into account. On balance I am satisfied that the interests of the Company, and those of the grievor will be served if he is returned to employment, with a demotion to the position of Operator, without compensation or benefits and without loss of seniority. I so order, and retain jurisdiction in the event of any dispute between the parties in respect of the interpretation or implementation of this award.

(signed) MICHEL G. PICHER
ARBITRATOR