

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1693

Heard at Montreal, Thursday, September 10, 1987

Concerning

### CANADIAN PACIFIC LIMITED

and

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Appeal of the discipline assessed the record of Conductor R.A. Hagerty of Moose Jaw, Saskatchewan of 45 demerit marks for failure to perform work as directed and for a direct refusal to carry out a proper instruction of a Company Supervisor and his consequent dismissal due to the accumulation of demerit marks in excess of sixty.

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

Mr. Hagerty was assigned as the conductor on train 571 on May 10, 1986 at Moose Jaw. He was informed that a bad order car, 54 cars from the head end of his train, would need to be removed from his train prior to departure. He was directed by Yard Supervisor D.H. Hawken to pull the train up and set the car off. Mr. Hagerty chose to perform the task from the tail end. Furthermore, once the car had been removed from the train, an angle cock was left open thereby making the completion of an air brake test of the train impossible. Mr. Hawken instructed Mr. Hagerty to close the angle cock which Mr. Hagerty declined to do.

The Union contends that the discipline assessed in this case was unwarranted under the circumstances and in any case, was unduly severe inasmuch as the result was the dismissal of Conductor Hagerty for an accumulation of demerit marks. They have requested the removal of discipline and the return to service with payment for all time lost for Mr. Hagerty.

The Company contends that the discipline is warranted as is the resultant dismissal for accumulation of demerit marks and have declined the Union's appeal.

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

**(SGD.) IAN ROBB**  
FOR: GENERAL CHAIRMAN

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

**(SGD.) E.S. CAVANAUGH**  
GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

D. A. Lypka – Supervisor, Labour Relations, Winnipeg  
B. P. Scott – Labour Relations Officer, Montreal  
G. W. McBurney – Assistant Supervisor Labour Relations, Winnipeg

And on behalf of the Union:

W. M. Jessop – General Chairman, Calgary  
I. Robb – General Chairman, Thunder Bay  
J. M. Hone – Director Research, Ottawa

## **AWARD OF THE ARBITRATOR**

On a careful review of the evidence the Arbitrator is singularly unimpressed with Conductor Hagerty's conduct. A conductor exercises a measure of independent responsibility in dealing with a train, with the scope to exercise some discretion. With that responsibility and discretion, however, goes a commensurate obligation to work reasonably and co-operatively with other persons in authority. Conductor Hagerty's disagreements with Yard Supervisor Hawken, firstly in refusing to remove a defective car in the manner suggested by the Supervisor, and secondly refusing to close an angle cock to seal the air braking system on the train can only be characterized as a petty and arbitrary assertion of his authority as a conductor.

Neither of the positions which he took appear to have any valid business purpose, nor can I accept that they were grounded in considerations of safety or efficiency. In the circumstances the Company did have grounds to discipline the grievor.

As the result of two prior awards of this board (**CROA 1665** and **1666**) the record of Conductor Hagerty stood at 25 demerits at the time of the incidents in question. The Arbitrator accepts the characterisation of the Union of the confrontation between the conductor and his supervisor as one continuing event, rather than as two separate infractions. For reasons not apparent on the record, Conductor Hagerty incurred several instances of discipline in a period of less than two weeks in May of 1986. But for a caution registered against his record in September of 1985, he was discipline free between November of 1983 and May of 1986.

Having regard to the totality of the grievor's record, however, which involves many instances of prior discipline over his 13 years service, the Arbitrator can understand the concerns of the Company respecting his potential for rehabilitation. Both his actions in respect of his supervisor and his responses during the ensuing investigation leave the impression of an individual more combative than candid, more clever than wise. In consideration of the grievor's 13 years service, however, and the improved quality of his record in the months immediately prior to May of 1986, the Arbitrator is inclined to give Conductor Hagerty the benefit of the doubt, and another opportunity to demonstrate that he can function as a conductor with the necessary measure of constructive co-operation with both fellow employees and supervisors.

For these reasons the grievor's record shall be amended to reflect the imposition of 30 demerits for the events of May 10, 1986, and he shall be reinstated in his employment, without compensation or loss of seniority, with his record to stand at 55 demerits. I retain jurisdiction in the event of any misunderstanding respecting the implementation of the terms of this award.

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