

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1735

Heard at Montreal, Thursday December 10, 1987

Concerning

CANADIAN NATIONAL RAILWAY

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Appeal of discipline assessed the record of Track Maintenance Foreman R.P. Culley effective 29 September 1986.

JOINT STATEMENT OF ISSUE:

On 29 September 1986, Mr. Culley contacted the Dispatcher and obtained a Uniform Code of Operating Rules No. 42 protection between Mileage 51.0 and 58.7 on the Guelph Subdivision during the hours of 0800 and 1700.

Following an investigation, Mr. Culley was assessed 20 demerit marks for a violation of UCOR No. 42 - Mile 51.0 - 58.7 Guelph Subdivision on 29 September 1986, which resulted in his discharge for accumulation of demerit marks.

The Brotherhood contended that the discipline assessed Mr. Culley was unwarranted and requested that he be reinstated with full compensation

The Company denied the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) R. A. BOWDEN
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. P. GREEN
FOR: ASSISTANT VICE-PRÉSIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. Glazer	- Counsel, Montreal
T. D. Ferens	- Manager Labour Relations, Montreal
G. C. Blundell	- System Labour Relations Officer, Montreal
A. Watson	- Labour Relations Trainee, Montreal
S. Hicken	- Relief Roadmaster, Sarnia

And on behalf of the Union:

M. Gottheil	- Assistant to the President, Ottawa
G. Schneider	- General Chairman, Winnipeg
R. S. Dawson	- Federation General Chairman, Winnipeg
R. P. Culley	- Grievor

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that Mr. Culley did violate UCOR Rule No. 42. He was plainly at fault when, being responsible for a Rule 42 Order covering his own crew as well as the crew of another foreman, he did not clearly communicate an instruction to remove control flags or take any step to confirm that such an instruction had been carried out. His inattention in that regard resulted in the undue delay of rail traffic.

The material reveals that this was the first time that Mr. Culley was responsible for Rule 42 protection spanning two separate work crews. While his prior record is not outstanding, I accept, on balance, that he was confused as to his obligation. While he erred in judgement and failed in the standard of care which he applied to his duties, his actions were not deliberate or reckless. In the circumstances I am persuaded that a penalty short of dismissal is appropriate. The grievor shall, therefore, be reinstated into his position, without compensation or benefits, and without loss of seniority. Needless to say any similar occurrence in the future must have the most serious of disciplinary consequences. I retain jurisdiction in respect of the implementation of this award.

(signed) MICHEL G. PICHER
ARBITRATOR