

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1819

Heard at Montreal, Tuesday, 13 September 1988

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of discipline assessed the record of Locomotive Engineer F. Zimmerman of Kamloops, B.C.

JOINT STATEMENT OF ISSUE:

On November 10, 1987, Locomotive Engineer F. Zimmerman was operating CN Extra 5044 West between Boston Bar and Thornton, B.C. During this tour of duty the train was operated at speeds which exceeded the permissible speed limit.

Following an investigation into this incident, Locomotive Engineer Zimmerman was assessed 30 demerit marks for his responsibility in the overspeed operation of Train Extra 5044 West operating on the Ashcroft Subdivision on November 10, 1987. As a result, Locomotive Engineer Zimmerman was discharged effective December 15, 1987 for the accumulation of demerit marks.

The Brotherhood contends that the Company violated Article 86.4 of Agreement 1.2. The Brotherhood further contends that the discipline assessed was too severe and requests that the discipline be expunged or reduced and Locomotive Engineer Zimmerman be reinstated to Company Service with compensation for time spent out of service.

The Company has declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:

(SGD.) P. SEAGRIS
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

D. C. St. Cyr	– Labour Relations Officer, Montreal
L. A. Harms	– Labour Relations Officer, Montreal
B. Ballingall	– Manager, Labour Relations, Edmonton
D. Lussier	– Coordinator Transportation, Montreal
J. W. Dear	– Superintendent, Kamloops
B. Cromp	– Trainmaster, Kamloops
A. J. Wagner	– Assistant Superintendent, Edmonton

And on behalf of the Brotherhood:

P. Seagris	– General Chairman, Winnipeg
P. Klippenstein	– Local Chairman, Jasper
D. Kipp	– Senior Vice-General Chairman, Kamloops
G. Hallé	– General Chairman, Quebec
J. Pickle	– General Chairman, Sarnia
F. Zimmerman	– Grievor

AWARD OF THE ARBITRATOR

It is not disputed that Locomotive Engineer Zimmerman did exceed the speed limit on November 10, 1987. The Brotherhood's representative suggested, however, that the precise amount of overspeed may have been incorrectly assessed because of what he maintains is the occasional unreliability of gauging the speed of a train by the use of the readings of hot box detectors, as was done in the instant case. He submits that that factor might be considered in mitigation.

The only real issue is the appropriate measure of discipline in the circumstances. On the positive side of the ledger, Locomotive Engineer Zimmerman is an employee of long service to the Company, having commenced employment in 1952. The thirty-five years of service which he had at the time of his termination must be weighed in assessing the appropriate measure of discipline. There is, moreover, no suggestion that apart from the incidents of prior discipline registered, particularly in the last two years of his employment, the grievor was anything but a good and productive employee.

On the negative side of the ledger is the pattern of discipline incurred by the grievor. For these purposes the Arbitrator considers the two year period prior to his discharge as most pertinent. On January 12, 1985 Mr. Zimmerman was assessed 10 demerits for a violation of speed restrictions. He was again assessed the same amount of demerit marks for a similar infraction on June 5, 1985. A third speeding infraction resulted in the twenty demerits on November 11, 1986. At the time of the culminating incident, Mr. Zimmerman's record stood at forty demerits, and he was cautioned that further violations of acceptable performance standards could result in his discharge.

Thirty demerits were assessed for the speeding infraction of November 10, 1987. While in the instant case the Arbitrator accepts that that penalty, which placed the grievor in a dismissable position, is arguably consistent with an application of progressive discipline, in light of the grievor's extremely long service to the Company, there is reason to question whether he should not be provided with one last chance. At the age of fifty-five, with virtually all of his working life invested in the service of the Company, the grievor's chances of finding alternative employment for the support of his family are not bright. In the Arbitrator's view the interests of the Company, as well as those of the grievor, are reasonably served if the grievor is returned to his employment on the clear understanding that any further disciplinary infraction must have the most serious of consequences.

The Brotherhood submitted the alternative argument that the rights of Mr. Zimmerman in respect of the Company's disciplinary investigation under Article 86.4 of the Collective Agreement were violated, and that his discipline must therefore be declared void from the outset. That Article provides as follows:

86.4 A locomotive engineer and his accredited representative shall have the right to be present during the examination of any witness whose evidence may have a bearing on the locomotive engineer's responsibility to offer rebuttal through the presiding officer by the accredited representative. The Local Chairman and/or the General Chairman to be given a copy of statements of such witness on request.

The material discloses that the Company initiated its investigation by obtaining statements from the other members of the grievor's train crew, at a time and place where the grievor was not present. It is also not disputed, however, that when the Brotherhood's objection to that manner of proceeding was communicated to the Company, prior to the grievor's own investigation and statement, the Company's officer decided to effectively void the statements previously obtained, and recall the employees concerned to repeat their statements in the presence of the grievor and his Union representative. This was done, and the Arbitrator can see in that method of proceeding no prejudice to the grievor nor any ultimate violation of the requirements of Article 86.4 or, indeed, the more general provision in Article 86.1 which entitles the grievor to "a fair and impartial hearing". This Office has long recognized that while collective agreements do provide important procedural protections for employees during the course of Company investigations, those procedures should not be elevated to the level of judicial proceedings fraught with undue technicality (see **CROA 575**). For the reasons related the position of the Brotherhood on this aspect of the grievance cannot succeed.

The Arbitrator therefore orders that the grievor be reinstated into his employment, without compensation or benefits, and without loss of seniority, with his disciplinary record to stand at fifty demerits. As noted above, in light of Mr. Zimmerman's recent disciplinary record and the seriousness of his obligations as locomotive engineer with respect of the safe operation of trains, he must appreciate that any further discipline may attract the gravest consequences. I retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award.

September 16, 1988

(Sgd.) MICHEL G. PICHER
ARBITRATOR