

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1853

Heard at Montreal, Tuesday, 13 December 1988

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

And

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Appeal of discipline assessed Trainman J. Gagné, Joffre, effective December 4, 1986 and subsequent dismissal for accumulation of demerit marks.

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

On December 4, 1986, the grievor was employed as Brakeman on VIA passenger train No. 20. The Company alleges that, during the course of the trip, the grievor was found to be asleep and thereby failed to perform certain duties. An investigation was conducted and the grievor was assessed 30 demerit marks for:

“Your unacceptable conduct and your violation of paragraph 1 and 2 of Rule 111 of the UCOR while you were on duty as a Trainperson on Train No. 20 at Lemieux, Drummondville Subdivision, on 4 December 1986.”

The 30 demerits, when added to his previous record, brought the total number of demerit marks assessed against his record to 70 and as a consequence the grievor was dismissed for accumulation of more than 60 demerit marks.

The Union appealed on the grounds that the discipline was unwarranted and, in any case, too severe.

The Company declined the appeal.

#### **FOR THE BROTHERHOOD :**

**(SGD.) R. LEBEL**  
FOR: GENERAL CHAIRMAN

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

**(SGD.) M. DELGRECO**  
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. R. Paquette – Labour Relations Officer, Montreal  
M. E. Healey – Manager, Labour Relations, St. Lawrence Region, Montreal  
J. M. Montigny – Manager, C.M.C., Montreal  
J. R. Labrosse – Co-Ordinator of Trains, Via Rail, Montreal

And on behalf of the Union:

R. Lebel – Vice-General Chairman, Quebec  
B. Leclerc – General Chairman, Quebec  
R. J. Proulx – Vice-President, Ottawa  
D. Hamelin – Witness  
A. Denis – Witness  
J. Gagné – Grievor

## **AWARD OF THE ARBITRATOR**

Given the evidence, the Arbitrator must conclude that the grievor dozed off momentarily when he was acting as tail-end brakeman on Train No. 20 on 4 December 1986. However, the evidence shows that, shortly before, the grievor had carried out the required inspections and carried out the duties assigned to him. The evidence also shows that Mr. Gagné's mistake did not place his train in jeopardy as the train could have operated with a reduced crew, without a tail-end brakeman.

This, however, does not excuse the grievor's mistake. The incident and the disciplinary response must be considered in their context. In **CROA 1573**, the Arbitrator had to rule on the discharge on an employee who was a security guard, who had purposely hidden himself to sleep during working hours. The Arbitrator said:

Are there mitigating factors that would support some measure of discipline short of discharge in these circumstances? It is generally accepted by Arbitrators, nor is it disputed by the Company, that something less than termination would be appropriate in the case of an employee with an otherwise good record, who inadvertently dozed off for a brief moment. In light of the grievor's deliberate actions, that principle has no application in the instant case.

In my opinion, the circumstances in this case lend themselves to the application of this principle. This was not a deliberate act on the part of the grievor, or a failure to carry out his duties for a lengthy period which jeopardized the safety of his train.

Despite these mitigating circumstances, it remains that it is unacceptable that a member of a train crew would fall asleep, even for a brief moment, when his train is en route (*see CROA 1841*). Furthermore, Mr. Gagné's disciplinary record is not impressive, The Arbitrator has determined that a lengthy suspension would be an appropriate disciplinary response.

Therefore, the Arbitrator orders that the grievor be reinstated, without loss of seniority, but without compensation for loss of wages and benefits. His disciplinary record will reflect forty demerit marks. It should be noted that it will be incumbent upon the grievor to avoid, at any cost, the imposition of further discipline in the future. I remained seized of this award in the event of any dispute between the parties in respect of the interpretation or implementation of this award.

December 16, 1988

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