

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1854

Heard at Montreal, Tuesday, 13 December 1988

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

And

### BROTHERHOOD OF LOCOMOTIVE ENGINEERS

#### **DISPUTE:**

Appeal of discipline assessed the record of Locomotive Engineer M.F. Cress of Winnipeg, Manitoba.

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

Locomotive Engineer M. F. Cress was in charge of train 338-26, Extra 5048 East, departing Dauphin at 2030 hours, 27 May 1987, destined to Symington Yard over the Gladstone and Rivers Subdivisions. The train and engine crew of Extra 5048 East overlooked an MBS restriction addressed to their train and entered the work limits held by Work Extra 5035.

Following an investigation into this incident, Locomotive Engineer Cress was assessed a six-month suspension for failure to comply with Manual Block System Clearance No. 885 dated 27 May 1987 Gladstone Subdivision, resulting in violation of Time Table 29, System Special Instructions 2.14, second paragraph.

The Brotherhood contends that the discipline assessed was too severe and should be reduced.

The Company disagrees with the Brotherhood's contention.

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

**(SGD.) P. SEAGRIS**  
GENERAL CHAIRMAN

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

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

There appeared on behalf of the Company:

L. A. Harms                   – Labour Relations Officer, Montreal  
J. R. Hnatiuk                 – Manager, Labour Relations, Montreal  
D. E. Lussier                 – Co-Ordinator, Transportation, Montreal

And on behalf of the Brotherhood:

P. Seagris                     – General Chairman, Winnipeg

## **AWARD OF THE ARBITRATOR**

The material establishes that the train under the control of Locomotive Engineer Cress wrongfully entered a restricted section of track, as a result of which it collided with Work Train Extra 5035. Fortunately damage was minimized by the defensive action taken by the engineer of the work train, although one employee did sustain injuries.

On the face of the material, the violation of Timetable 29, System Special Instructions 2.14 committed by the grievor must be viewed as serious. While the Brotherhood's representative sought to persuade the Arbitrator that discipline should be mitigated by what he maintains was the fatigued condition of the train crew in question, which he attributes in a broad way to the scheduling system and mandatory rest scheme implemented by the Company, the evidence before the Arbitrator is simply too general to sustain such a conclusion. There is no suggestion that either the grievor or any member of his crew sought to book off the run in question because they did not have sufficient rest, as would be their right to do without fear of reprisal. If the evidence disclosed that the grievor had been improperly disciplined for such conduct in the past, or coerced or threatened into operating a locomotive in unsafe conditions, a very different conclusion might obtain. Similarly, if competent medical evidence were adduced to confirm a degree of ergonomic stress occasioned by an unreasonable workload undertaken by the grievor and acquiesced in by the Company, the grievance might take on a different complexion. In the absence of evidence of that kind, however, the grievance must be dismissed.

December 16, 1988

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