

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1925

Heard at Montreal, Wednesday, 14 June 1989

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

And

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Assessment of 10 demerit marks to Yard Helper P. Keeping of Ottawa, Ontario, effective 13 January 1988.

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

On 13 January 1988, Yard Helper P. Keeping worked the 2300 yard assignment at Walkley Yard. The Company alleges that car CN 56749 sustained damage when its load apparently shifted as a result of rough handling.

Following an investigation held on 17 February 1988, Yard Helper P. Keeping was assessed 10 demerit marks effective 13 January 1988, for his responsibility in the incident.

The Union filed a grievance, alleging the discipline assessed was too severe.

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

**(SGD) W. G. SCARROW**  
GENERAL CHAIRMAN

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

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

There appeared on behalf of the Company:

J.B. Bart	– Manager, Labour Relations, Montreal
J.D. Pasteris	– Manager, Labour Relations, St. Lawrence Region, Montreal
S. Grou	– Labour Relations Officer, Montreal
P.D. Morissey	– Labour Relations Officer, Montreal
S.F. McConville	– Labour Relations Officer, Montreal

And on behalf of the Union:

W.G. Scarrow	– General Chairman, Sarnia
J.A. McLean	– Local Chairman, Ottawa
G. Binsfeld	– Secretary, GCA, St. Catharines
P. Keeping	– Grievor

### **AWARD OF THE ARBITRATOR**

On the basis of the material filed the Arbitrator is satisfied that on January 13, 1988 the grievor, while assigned and working in the position of yard foreman, did fail to provide adequate instruction to the locomotive engineer who was working as part of his crew. Because of the engineer's uncertainty as to the movement of a car bearing a load of stone, the car was pushed at an excessive speed for the purposes of coupling it to other cars, as a result of which, upon coupling, the load shifted and a substantial amount of its cargo spilled to the ground. By his own admission, the grievor cannot escape responsibility for what happened to the extent that he was ultimately responsible for the rough handling of the car in question.

In the Arbitrator's view the assessment of ten demerits is not excessive in the circumstances. The statement of the engineer reveals, without apparent conflict, that he was not specifically instructed on the nature of the movement that was to take place, and was under a misapprehension that he was to push the car to its point of destination, being unaware that it was uncoupled when he was instructed to slow his engine. Mr. Keeping was not entitled to assume that the locomotive engineer was aware of the procedure the crew was following, as he had no specific instructions from him in that regard. While the damage involved was relatively minor, the potential for greater harm was real, and the Company was justified in resorting to the assessment of demerits to impress the importance of that fact upon the grievor.

For these reasons the grievance must be dismissed.

June 16, 1989

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