

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1940

Heard at Montreal, Tuesday, 12 September 1989

Concerning

**CANADIAN PACIFIC LIMITED**

And

**UNITED TRANSPORTATION UNION**

### EX PARTE

#### **DISPUTE:**

Engineer/Trainee D.B. North, Moose Jaw, was assessed 130 demerit marks for alleged incidents arising on a tour of duty on December 18, 1987 and he was dismissed on the basis of this accumulation of demerits.

#### **UNION'S STATEMENT OF ISSUE:**

On January 20, 1988, the Company dismissed Engineer/Trainee D.B. North for the alleged accumulation of demerit marks.

On January 20 1988, Engineer/Trainee D.B. North was notified that a total of 130 demerit marks had been assessed against him on the basis of alleged incidents arising on a tour of duty on December 18, 1987.

On March 20, 1989, the General Manager reduced the discipline to 45 demerit marks for Engineer/Trainee D.B. North as well as for Conductor K.S. Kullman, who had been dismissed for this same incident.

This reduction allowed reinstatement of Conductor Kullman with 55 demerit marks as his previous record reflected 10 demerit marks.

Engineer/Trainee D.B. North was not reinstated as his previous record reflected 40 demerit marks.

The Union asserts that the demerits were issued without just cause and that as the investigation did not comply with the Collective Agreement the discipline imposed ought to be null and void.

The Union asserts that the Company's actions were unreasonable, arbitrary and discriminatory; the discipline imposed was clearly excessive and unwarranted in the circumstances.

The Union requests that the demerits be removed from the record of the grievor or alternatively significantly reduced and that the grievor be reinstated with full compensation and no loss of seniority.

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

**(SGD) B. L. MCLAFFERTY**

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. A. Lypka	– Supervisor, Labour Relations, Vancouver
B. Scott	– Labour Relations Officer, Montreal
J. D. Huxtable	– Assistant Supervisor, Labour Relations, Vancouver

And on behalf of the Union:

W. M. Jessop	– General Chairman, Calgary
B. L. McLafferty	– Vice-General Chairman, Calgary
I. Robb	– Secretary, GCA, Thunder Bay
B. Marcolini	– Vice-President, Ottawa
R. J. Proulx	– Vice-President, Ottawa
S. Keen	– Observer

### **AWARD OF THE ARBITRATOR**

The material establishes that at the time of the incident giving rise to the grievor's discipline he had a record of forty demerit marks outstanding. It is not disputed that on December 18, 1987 the grievor did knowingly participate in the violation of a number of UCOR rules, including failing to ensure that any member of the crew was positioned at the rear of the train, as well as a violation of Instruction 14 of Form 583 by failing to ensure that a full service brake application had been made before separating and leaving a portion of the train at three separate locations, as well as other Form violations for failing to ensure the proper brake pipe reduction before coupling and failing to ensure the restoration of brake pipe pressure at the rear of the train after setting off cars. It is also clear that the grievor unfortunately involved himself in a clumsy and ill-advised conspiracy to withhold information from the Company, pending a formal investigation, respecting the circumstances of the derailment of a car during road switching, which resulted in injuries and the hospitalization of an employee.

The Union's position is that the forty-five demerits ultimately issued against the grievor are excessive, and that his treatment, as compared with the other employees, is discriminatory. With that position the Arbitrator cannot agree. Firstly, while it is true that primary responsibility for certain of the infractions of the rules and forms respecting train movements lies with the conductor and engineman, their error does not absolve the grievor, as an engineer trainee, from his own responsibility as an employee. The infractions related above are all ones which he knew, or reasonably should have known, were in contravention of correct procedure and which he failed to take any steps to prevent.

The termination of the grievor does not result from an invidious assessment of discipline against him as compared to the other employees, but rather from the unfortunate fact that he had a prior record of forty demerits at the time of the events in question. Without commenting definitively on the appropriate measure of discipline, the Arbitrator is satisfied that at a minimum, twenty demerits would have been within the appropriate range of discipline in the circumstances, a quantum of penalty which would have raised the grievor's record to the dismissable level. Neither the grievor's length of service nor its quality suggests any compelling grounds for mitigation in the instant case.

For these reasons the grievance must be dismissed.

September 15, 1989

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