

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2092

Heard at Montreal, Tuesday, 8 January 1991

concerning

**VIA RAIL CANADA INC.**

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

### **DISPUTE:**

The assessment of a three-month suspension to Mr. H.K. Beckett for exceeding the allowable speed limit while operating Train No. 3 on August 8, 1989.

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

On August 8, 1989, Messrs. H.K. Beckett and G.A. Brown were the second and first Locomotive Engineers, respectively, operating Train No. 3.

A slow order, restricting the speed of trains operating over the east switch at Palo, was in force governing the speed to ten m.p.h. Train No. 3 exceeded that restriction.

As a consequence, both employees attended disciplinary investigations and were subsequently assessed a three-month suspension commencing September 6, 1989.

It is the Brotherhood's position that in view of Mr. Beckett's work record, he should have been assessed demerit marks rather than a three-month suspension.

It is the Corporation's position that it is within our prerogative to issue the discipline assessed and, in view of the circumstances, the discipline is appropriate.

### **FOR THE BROTHERHOOD:**

**(SGD.) D. S. KIPP**  
GENERAL CHAIRMAN

### **FOR THE CORPORATION:**

**(SGD.) C. C. MUGGERIDGE**  
DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

K. W. Taylor – Senior Labour Relations Officer, Montreal  
D. F. Doig – Officer, Transportation, Winnipeg

And on behalf of the Brotherhood:

W. A. Wright – Acting General Chairman, Kamloops

### **AWARD OF THE ARBITRATOR**

In the Arbitrator's view the position of the Brotherhood is well founded. The record reveals that the grievor has been an employee of the Corporation, and of its predecessor the Canadian National Railway, since September of 1949. In forty years' service, including service as a locomotive engineer since 1956, he has never once been disciplined for any infraction whatsoever. While the Arbitrator accepts that the speeding violation for which he was assessed discipline for the incident of August 8, 1989 was serious, and was deserving of discipline, it is far from clear that the rehabilitative impact of a three-month suspension was necessary for such an employee of long-standing, exemplary service.

The Corporation seeks to justify the discipline imposed on Mr. Beckett as being consistent with the three-month suspension assessed against his co-engineer, Mr. Brown. While the Arbitrator appreciates circumstances such as these may not be without difficulty for an employer, and that as a general matter like offenses should receive similar treatment, effect must also be given to mitigating factors and the consideration of each employee's case on an individual basis. Mr. Brown's service is not as extensive as the grievor's, and he has a serious record of prior rules infractions. There is, on the face of it, little reason to question a serious degree of penalty in his case, including a lengthy suspension, nor was any grievance filed on his behalf. In the Arbitrator's view, however, the assessment of the exact same penalty to an employee of Mr. Beckett's extraordinarily long and unblemished service fails unduly to recognize his right to have his case judged on its own merits, in accordance with principles of progressive discipline.

For the foregoing reasons the grievance is allowed. the Arbitrator directs that penalty of twenty-five demerits be substituted for the suspension assessed against Locomotive Engineer Beckett, and that he be compensated for all wages and benefits lost by virtue of his suspension.

January 11, 1991

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