

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2124

Heard at Montreal, Tuesday, 12 March 1991

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

The discharge of Conductor R. Trempe, effective June 20, 1990.

JOINT STATEMENT OF ISSUE:

On June 20, 1990, R. Trempe was working as the conductor on Train 308 operating between Montreal and Joffre on the Drummondville Subdivision. On that date, track maintenance was being performed between Mileage 15 and Mileage 16 on the Drummondville Subdivision.

The crew of Train 308 were in possession of Daily Operating Bulletin (D.O.B.) No. 171 dated 20 June 1990 which contained the following directive:

7. On June 20
between the following hours
zero seven thirty 0730
and seventeen hundred 1700
eastbound trains shall approach red signal
at Mileage sixteen 16
and westbound trains shall approach red signal
at Mileage fifteen 15
Drummondville Subdivision
prepared to stop and do not pass the signal without
having received instructions
from Foreman Reno Routier
either by radio communication or by personal contact.
The yellow signal governing westbound trains
is situated at the east switch of the Trudel siding.

Despite the requirements of that directive a portion of the train under the direction of the grievor passed the red signal at Mileage 16 without prior authorization from Foreman Routier. After investigation the grievor was dismissed June 20, 1990, "for failing to conform to the requirements of Article 3.2, paragraph 1 of the General Operating Instructions resulting in a violation of Article 7 of D.O.B. No. 171 in effect on June 20, 1990 while you were working as Conductor on Train 308".

The Union maintains that this discipline is too severe.

The Company does not agree.

FOR THE UNION:

(SGD.) R. LEBEL

for: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) M. DELGRECO

for: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

M. S. Hughes – Labour Relations Officer, Montreal
J. B. Bart – Manager, Labour Relations, Montreal
J. Pasteris – Manager, Labour Relations, St. Lawrence Region, Montreal
D. Parent – Assistant Manager, Operations, CMC, Montreal

And on behalf of the Union:

R. Lebel – General Chairperson, Quebec
J. Collet – Local Chairperson, Quebec
G. Hallé – General Chairman, BofLE, Quebec
G. Whiteman – Local Chairman, BofLE, Montreal
R. Mongeon – Witness
R. Trempe – Grievor

AWARD OF THE ARBITRATOR

For the reasons related in **CROA 2123**, at the time of the incident of June 20, 1990, Mr. Trempe's discipline file effectively stood at 30 demerit marks. This was as a result of a violation of the General Operating Instructions which occurred on January 4, 1990, when the grievor permitted his train to proceed into restricted territory.

The fact that he had committed a similar violation on 20 June 1990 is not disputed. The sole question to be decided is whether the discharge of Mr. Trempe is justified in the circumstances.

To the Arbitrator, Mr. Trempe's twenty-four years of service and the fact that his discipline record had been clear for five years prior to the incident of January 4, 1990 are important mitigating factors. It remains however that proceeding past a red signal without the prior authorization of the foreman responsible for track maintenance is a serious offence which deserves a serious measure of discipline. That is even more true in the case of recidivism. In the circumstances, I consider that a long period of suspension will serve to communicate to the grievor the need to respect the operating rules and to make him understand that similar conduct in the future will result in severe disciplinary repercussions.

For the foregoing reasons, the Arbitrator orders that Mr. Trempe be reinstated into his employment, without compensation for loss of wages or benefits, and without loss of seniority.

March 15, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR