

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2234

Heard at Montreal, Tuesday, 10 March 1992

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed Yard Foreman R. Creany, Montreal.

JOINT STATEMENT OF ISSUE:

On March 3rd, 1989, Yard Foreman Creany was employed on assignment #1221, at Central Station Montreal. While moving car B.C. 100 from track 23 to track 6, a 240 volt cable which was attached to the car was cut and the telephone wires were pulled out.

Following an investigation of the matter, Yard Foreman Creany was assessed 15 demerit marks "for failing to ensure the necessary precautions prior to movement of B.C. 100 and not submitting a form CN-3903".

The Union contends that there is a lack of evidence in respect to the infraction and thus the discipline was unwarranted and should be removed.

The Company declined the Union's appeal.

FOR THE UNION: FOR THE COMPANY:

(SGD.) W. G. SCARROW (SGD.) J. E. PASTERIS

GENERAL CHAIRPERSON for: VICE-PRESIDENT, ST. LAWRENCE REGION

There appeared on behalf of the Company:

J. E. Pasteris – Manager, Labour Relations, Montreal

D. Laurendeau – System Labour Relations Officer, Montreal

N. Dionne – System Labour Relations Officer, Montreal

And on behalf of the Union:

F. Garand – Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

The material establishes, to the satisfaction of the Arbitrator, that Business Car 100 was connected to a 240 volt power cable, as well as to telephone lines, prior to its being moved under the supervision of Yard Foreman Creany on March 3, 1989. Having regard to the fact that neither Mr. Creany nor his helper inspected the car by walking alongside of it, the balance of probabilities is that they failed to notice the cables running under the car to the connector box. It is significant, in the Arbitrator's view, that the car was inspected by the shop supervisor without any notation of irregularity, some three and one half hours prior to the car being moved by Yard Foreman Creany. In the circumstances, the Arbitrator is satisfied that the damage to the car was caused by the failure of Mr. Creany and his helper to properly inspect the car before moving it, and to await the disconnection of the cables.

The second part of the discipline concerns the alleged failure of Mr. Creany to fill out an accident report. This aspect of the Company's case the Arbitrator finds to be less compelling. There is nothing in the evidence to suggest that Mr. Creany and his helper knowingly caused the damage to the car's connector box

and cables. On the contrary, as far as they were aware, the car was not connected at the time it was moved. In that case it was not unreasonable for Mr. Creany to take the position that he had no knowledge of the car having previously been hooked up, or of having caused any accident or damage. Therefore, in the unique circumstances of this case the Arbitrator cannot sustain the Company's view that Mr. Creany was further liable to discipline for not submitting an accident report on a form CN-3903.

The Union further objects that the presiding officer at the investigation, Trainmaster D. Belanger, submitted evidence in the form of a written deposition. The admission of the deposition was objected to by the Union's representative at the investigation. While technically the Arbitrator can appreciate the basis of the Union's objection, a review of the letter tabled by Mr. Belanger discloses no fact that is contentious. It merely relates the reports of the damage which were made to Mr. Belanger, as well as the fact that he spoke with Mr. Creany, his helper and the locomotive engineer, and that Mr. Creany had declined to fill out a form 3903. There is nothing on the face of the deposition which contradicts the Union's witnesses or draws any conclusion adverse to the grievor. More significantly, however, the Joint Statement of Issue, which defines the dispute over which the Arbitrator has jurisdiction, does not identify any procedural irregularity or unfairness as a matter to be considered or resolved at arbitration. For these reasons the Arbitrator cannot sustain this aspect of the Union's submission.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator is satisfied, on the balance of probabilities, that Yard Foreman Creany did fail to ensure the necessary precautions prior to the movement of Business Car 100 on March 3, 1989 at Central Station, Montreal. He is not, however, deserving of any discipline for his refusal to fill and submit a form CN-3903. In the circumstances the discipline assessed shall be reduced to ten demerits.

March 13, 1992 (Sgd.) MICHEL G. PICHER

ARBITRATOR