

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2267

Heard at Montreal, Wednesday, 15 July 1992

concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Appeal of discipline assessed Conductor J.L. Yungblut, effective 28 March 1991.

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

On 28 March 1991 Conductor Yungblut had been employed on Train 419 (Extra 5362 West) from Hamilton to Sarnia and was located in the cab of the locomotive when his movement had passed Signal 227N, located at Mileage 22.8 on the Dundas Subdivision, while displaying a stop indication.

Following investigation into the incident Conductor Yungblut was assessed a 60 day suspension for violation of C.R.O.R. 429.

The Union contends that Articles 82.1 and 82.7 of Agreement 4.16 had been violated by the Company and that the discipline assessed the grievor was unwarranted or at the least was excessive. The Union subsequently requests the removal of the discipline and compensation for loss of earnings sustained by the grievor.

The Company declined the Union's appeal.

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

**(SGD.) M. P. GREGOTSKI**  
GENERAL CHAIRMAN

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

**(SGD.) A. E. HEFT**  
for: VICE-PRESIDENT, GREAT LAKES REGION

There appeared on behalf of the Company:

J. M. Kelly	– Labour Relations Officer, Great Lakes Region, Toronto
A. E. Heft	– Manager Labour Relations, Great Lakes Region, Toronto
B. Berard	– Manager Train and Engine Service, Hamilton
N. Dionne	– System Labour Relations Officer, Montreal
M. Fisher	– Coordinator Transportation, Montreal

And on behalf of the Union:

R. A. Beatty	– Local Chairman, Hornepayne
J. Coffey	– Local Chairman, Hamilton

## **AWARD OF THE ARBITRATOR**

The thrust of the position advanced by the Union is that Conductor Yungblut was not responsible for the violation of CROR 429. It submits that the incident involving the passing of a stop signal by Extra 5362 West was caused entirely by the failure of the locomotive engineer to handle the braking system of his train in an appropriate manner.

The Arbitrator has some difficulty with that submission. It is not disputed that the conductor's knowledge of the train's braking system, and of the methods of train handling being utilized by the locomotive engineer, are limited, and that he is not directly responsible for the actions of the engineman in that regard. However, there are other aspects of the facts which raise questions about his exercise of his own responsibilities.

It is common ground that it is part of the responsibilities of the conductor to ensure that his train movement conforms in all respects to the requirements of the CROR. This includes speed limitations and the obligation to respect all signals. The material before the Arbitrator discloses that the train's speedometer was at all times visible to Conductor Yungblut. It is further common ground that he was thoroughly familiar with the territory where the incident occurred. In these circumstances the Arbitrator is satisfied that by the exercise of normal precaution the conductor was in a position to know, and reasonably should have known, that the speed at which his train was being operated was such as to seriously call into question whether it would be able to stop in advance of Signal 227N at Mileage 22.8 on the Dundas Subdivision, which he knew displayed a stop indication.

The explanation of Conductor Yungblut, to the effect that he was busy getting his coat on in anticipation of performing some switching duties in the Brantford Yard does not, in my view, excuse his inattention to the obvious overspeed of his train at the time in question. In the Arbitrator's view it is not unreasonable to have expected the conductor be aware of the rate of speed which would be appropriate to a safe stop of his train as it approached the signal, and to immediately communicate any concern to the locomotive engineer, if only to prompt an earlier application of the train's emergency braking system. Nor should the importance of that slight advantage be minimized, as it is common ground that in the circumstances at hand a collision was narrowly averted, as another train had proceeded across the track in question only twenty-five seconds before the grievor's train passed Signal 227N. It is among the most important responsibilities of a conductor to monitor the safe speed of his train as it approaches a stop signal. In the instant case the grievor failed in that responsibility, and as a result was deserving of a serious measure of discipline.

The issue then becomes the appropriate degree of penalty in the circumstances. I am satisfied, in all of the circumstances, that the assessment of a sixty day suspension was within the appropriate range of discipline, and that given the seriousness of the incident, it was not inappropriate for the Company to hold the grievor out of service pending the disposition of his case. For all of these reasons the grievance must be dismissed.

July 17, 1992

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