

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2348

Heard at Montreal, Tuesday, 13 April 1993

concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### BROTHERHOOD OF LOCOMOTIVE ENGINEERS

#### DISPUTE:

Appeal of discharge of Locomotive Engineer W.W. Fry, London.

#### JOINT STATEMENT OF ISSUE:

On January 29, 1992, Locomotive Engineer Fry was employed on Train 585 (Extra 4134 East) from London to Woodstock on the Dundas Subdivision. During a switching move at the General Motors facility at Woodstock, Locomotive Engineer Fry's train consist collided with four cars within the plant, derailing one car and damaging the customer's track and stop block.

Following an investigation of the matter, Locomotive Engineer Fry was assessed 15 demerits for violation of Rules 12.2 and 123(c) of the Canadian Rail Operating Rules resulting in the derailment of CN 410211 and damage to customer's property in track DG33, Woodstock. This increased Locomotive Engineer Fry's current discipline record to 65 demerits and 1 written reprimand, culminating in Locomotive Engineer Fry's discharge effective 31 March 1992 for accumulation of demerits.

The Brotherhood contends that there are mitigating factors to be considered and that the discipline assessed is too severe under the circumstances.

The Company disagrees with the Brotherhood's contentions and has declined the Brotherhood's request.

**FOR THE BROTHERHOOD:**

**FOR THE COMPANY:**

**(SGD.) C. HAMILTON**  
GENERAL CHAIRMAN

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

There appeared on behalf of the Company:

R. Bateman	- Labour Relations Officer, Toronto
A. E. Heft	- Manager, Labour Relations, Toronto
D. Brodie	- System Labour Relations Officer, Montreal
J. J. Campbell	- Assistant Superintendent, London
M. S. Fisher	- Director, Crew Management Centre, Moncton
J. Vena	- Coordinator, Transportation, Montreal

And on behalf of the Brotherhood:

C. Hamilton	- General Chairman, Kingston
W. W. Fry	- Grievor

### **AWARD OF THE ARBITRATOR**

The evidence before the Arbitrator establishes that the grievor did share in the responsibility for the derailment of a car and damage to the customer's property at the General Motors facility at Woodstock, Ontario on January 29, 1992. It is clear that Locomotive Engineer Fry continued a switching move without proper radio communication between himself and the trainman, F.S. Swindall, who was stationed at the head of his movement. This he did, although he was aware that Trainman Swindall's radio was defective. At a minimum, if the grievor's evidence is accepted, he should have stopped his train when he heard no further instructions from Trainman Swindall, in conformance with CROR 12.2, which required him to bring his train movement to a stop "if no further communication is received before the movement has travelled one-half of the distance required by the last instruction." It is also clear that there was no repetition of the instructions received by Locomotive Engineer Fry, contrary to CROR 123(c).

While the Arbitrator is satisfied that the locomotive engineer was no more nor less responsible than the trainman and conductor who were also involved in the movement, it is not disputed that they were also assessed fifteen demerits each for their negligent conduct. In the circumstances I am compelled to conclude that the assessment of fifteen demerits was within the appropriate range of discipline.

A review of the grievor's record leaves little basis to mitigate against the consequences which flow from Locomotive Engineer Fry having achieved an overall discipline record of sixty-five demerits in addition to one written reprimand. At the time of the incident his record stood at fifty demerits. His past discipline included prior suspensions of sixty days and ninety days for falsification of time claims, and a violation of CROR 429 and CROR 102(a)(i), which involved passing a stop signal. The grievor's record also includes another rules violation which resulted in the derailment of a locomotive under his control.

While the grievor's eighteen years of service are not without significance, they are, on the whole, overshadowed by the generally negative disciplinary record which preceded the culminating incident. On the whole, the Arbitrator cannot see any substantial basis for a reduction of the penalty assessed. For these reasons the grievance must be dismissed.

April 16, 1993

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