

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2480

Heard in Montreal, Thursday, 12 May 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]**

DISPUTE:

Assessment of thirty demerit marks on March 12, 1993 to Conductor P. Champagne of Melville, Saskatchewan for delay to Train 218 XA 27 at Watrous on February 28, 1993 which resulted in his discharge for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On February 28, 1993 Conductor Champagne was ordered for 1150 on Train 218 XA 27 at Watrous. Conductor Champagne was on duty at 1135 when he heard that a taxi was coming to pick up the crew. Conductor Champagne called the RTC but the line was busy and was subsequently advised by the Bunkhouse Attendant that, according to the RTC, no request had been made for a taxi. Conductor Champagne again attempted to call the RTC regarding the whereabouts of a taxi for the crew but there was no answer. The Bunkhouse Attendant subsequently advised Conductor Champagne that the RTC had called and said that if a taxi had not been called for the crew that the Attendant was to do so. The crew eventually reached their unit and Train 218 XA 27 left the outer switch at 1320.

On March 8, 1993 Conductor P. Champagne appeared for an interview regarding the delay of Train 218 XA 27 on February 28, 1993. At the investigation the Union voiced its objection regarding several perceived procedural irregularities including the Company's refusal to allow the Union to be present for the questioning of the Crew's Engineman and the Company's refusal to allow the Union to fully present its case. The Company dismissed the Union's objections.

On March 12, 1993 Conductor Champagne was assessed 30 demerits for delay to Train 218 XA 27 at Watrous on February 28, 1993 and was discharged for accumulation of demerits.

The Company maintains that it is the responsibility of the conductor to ensure that his train departs on time and Conductor Champagne failed in this responsibility. Based on his discipline record, the imposition of 30 demerits and subsequent discharge for accumulation of demerits was justified.

The Union appealed the discipline and resulting discharge on the following grounds: (1) Conductor Champagne was not given a fair and impartial investigation; (2) the imposition of 30 demerits and the resulting discharge was not warranted in all circumstances; and (3) alternatively, that 30 demerits and discharge was excessive in all the circumstances. The Union is also disputing the Company's statement of Conductor Champagne's record of demerits.

The Company denied the Union's request.

FOR THE UNION:

(SGD.) J. W. ARMSTRONG
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) G. BLUNDELL
FOR: SENIOR VICE-PRESIDENT, WESTERN CANADA

There appeared on behalf of the Company:

- B. Laidlaw – Labour Relations Officer, Edmonton
- R. Pelesh – District Superintendent Transportation, Saskatoon
- R. Hedley – Project Manager, Transportation Services, Edmonton
- J. Carron – Counsel, Montreal

And on behalf of the Union:

- D. Ellickson – Counsel, Toronto
- J. W. Armstrong – General Chairperson, Edmonton
- L. H. Olson – President, UTU-Canada, Ottawa
- B. Henry – Vice-General Chairperson, Edmonton
- P. Champagne – Witness
- P. Champagne – Grievor

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that in the circumstances the grievor was partially responsible for the failure of a taxi to pick up his crew in a timely fashion at the bunkhouse in Watrous on February 28, 1993. The evidence indicates, beyond controversy, that Conductor Champagne and his crew were ordered for 11:50 on Train 218 XA 27 at Watrous. Mr. Champagne presented himself at the appearance trailer at 11:35 hours to register and obtain his orders. It appears that he was then told by another employee that a taxi was coming to pick up his crew. He did not, however, communicate with the RTC to confirm that a taxi had been called. In fact, none had and a delay of the train ensued.

A number of factors are advanced in defence of Mr. Champagne. Firstly, he relates that he did in fact call the RTC on two occasions, and received no answer notwithstanding that he let the telephone ring a substantial number of times. Secondly, the Union argues it is the responsibility of the RTC, and not of the conductor, to see to the providing of a taxi to transfer the crew from the bunkhouse to the head end of their train in the Watrous Yard. Indeed, as part of its submission, it argues that the conductor would be no more responsible in that regard than would the locomotive engineer, noting that the locomotive engineer was not disciplined in the circumstances.

The Arbitrator has some difficulty with the submissions made by the Union. As conductor, Mr. Champagne was ultimately responsible for overseeing the timely operation of his train. While the material before me confirms that at Watrous it is generally the RTC who calls a taxi, I am satisfied, on the balance of probabilities, that both in principle and in practice it is for the conductor of any given crew to communicate with the RTC in relation to the crew's departure, and to verify that a taxi has been called. The fact that the RTC operator may be slow in answering a telephone call is not, in my view, an answer to the failure of a conductor to obtain that information. Indeed, in view of the telephone difficulties, it would not have been inappropriate for Mr. Champagne to use his radio as an alternative means to communicate with the rail traffic controller in the circumstances.

Although the Union has alleged a violation of the grievor's right to a fair and impartial investigation, the Arbitrator cannot sustain that position upon a review of the record. It appears that the grievor and his union representative were given the opportunity to examine Locomotive Engineer Parker, although they abandoned their questioning of Mr. Parker when the first two questions put were ruled irrelevant by the investigating officer. I can find no violation of the collective agreement in the rulings made by the officer, nor any denial of the opportunity to put reasonable questions to Mr. Parker. Lastly, the Union has not directed the Arbitrator to any provision in its collective agreement which would have entitled it to be present at the investigation of Locomotive Engineer Parker. In the circumstances, no violation of the collective agreement provisions is disclosed.

In the Arbitrator's view there are, however, mitigating factors to be considered in assessing the appropriate measure of discipline in relation to the incident at Watrous. In light of prior awards issued in **CROA 2478** and **2479** the grievor's disciplinary record would have stood at thirty-five demerits at the time of this incident. He then had

twenty-seven years' service during which he did not accumulate demerits at a high rate. In my view this is an appropriate case for the substitution of a substantial suspension for the infraction disclosed, without compensation.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor's record be adjusted to reflect a suspension for the incident in question, bringing his total outstanding demerits to thirty-five. He shall be reinstated into his employment, without compensation or benefits, and without loss of seniority.

13 May 1994

(sgd.) MICHEL G. PICHER
ARBITRATOR