

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2540

Heard in Montreal, Wednesday, 10 November 1994

concerning

CANADIAN PACIFIC LIMITED

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

The dismissal of Yard Foreman B. Leclerc of Montreal, Quebec.

JOINT STATEMENT OF ISSUE:

On October 26, 1992, Yard Foreman B. Leclerc as working on Assignment 27 at St. Luc Yard, Montreal, Quebec. During his tour of duty the grievor's movement passed Signal 16 which was indicating STOP.

After a fair and impartial investigation, Mr. Leclerc received a Form 104 informing him that 45 demerit marks had been debited to his record, and another Form 104 advising him that he had been dismissed for the accumulation of demerit marks.

The Council's position is that Mr. Leclerc's responsibility is mitigated due to his lack of familiarity with the territory on which he was working. Furthermore, the Council submits that Mr. Leclerc acted to the best of his ability to bring the movement to a stop prior to passing Signal 16. The Council has requested that Mr. Leclerc be reinstated into Company service on a compassionate basis, without compensation, but with full seniority and benefits intact.

The Company has declined the Council's request.

FOR THE COUNCIL:

(SGD.) D. A. WARREN
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) R. E. WILSON
FOR: GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

H. B. Butterworth – Labour Relations Officer, Toronto
R. E. Wilson – Manager, Labour Relations, Toronto

And on behalf of the Council:

D. A. Warren – General Chairperson, CCROU(UTU), Toronto
L. O. Schillaci – General Chairperson, CCROU(UTU), Calgary
J. Brunet – Local Chairperson, CCROU(UTU), Montreal
T. G. Hucker – International Vice-President, BofLE, Ottawa
R. S. McKenna – General Chairman, CCROU(BLE), Ottawa
D. C. Curtis – General Chairman, CCROU(BLE), Calgary
B. Leclerc – Grievor

AWARD OF THE ARBITRATOR

The material establishes, beyond contradiction, that Yard Foreman B. Leclerc was responsible for a yard movement which passed Signal 16 at the St. Luc Yard, when it was indicating stop, on October 26, 1992. While the Form 104 discharging the grievor cites a number of CROR violations, chief among the infractions is the violation of rule 429, which involves passing a stop signal. It is also clear that the grievor failed to immediately convey an emergency message to the RTC, did not immediately protect his movement as required by CROR rule 99 and did not obtain clearance from the RTC before undertaking a reverse movement to clear the signal, in violation of CROR rule 573. It is not disputed that the errors committed by the grievor were extremely serious. The sole issue is the penalty which is appropriate in the circumstances.

In **CROA 2356** this Office had occasion to review a substantial number of cases of discipline for violations of CROR rule 429, formerly UCOR rule 292. As noted in that award, over a period of many years the assessment of demerits for such an infraction has been "... within the high range, between thirty and thirty-five demerits." As the award indicates, while discharge is not automatic in such cases, it has been imposed and sustained where aggravating circumstances are disclosed. In the instant case Mr. Leclerc was not discharged solely by reason of his rules violation in relation to the events of October 26, 1992. For those actions he was assessed forty-five demerits. Unfortunately, his prior disciplinary record at the time was precarious. It already stood at forty-five demerits, and involved previous UCOR rules violations, including infractions of rules 104, 106 and 112 and UCOR rule 10. Between January of 1988 and the events giving rise to his termination, the grievor was involved in four derailments and one side collision. The precarious state of Mr. Leclerc's record caused the Company to counsel Mr. Leclerc when his record reached forty-five demerit marks in June of 1992.

When the record is scanned for compelling reasons to exercise the Arbitrator's discretion to reduce the penalty of discharge, mitigating factors are lacking. The grievor is not an employee of substantial long service, having worked for the Company for some twelve years. As noted above, the four year period prior to his discharge involved repeated rules infractions, and ultimately a warning by the Company that his job was in jeopardy. The violation of CROR 429 which occurred is extremely serious, and the errors of judgment exhibited by the grievor immediately following the infraction compound the concern which the Company reasonably had for his ongoing employability. Nor can the Arbitrator place great weight on the submission of the Union that Mr. Leclerc was relatively unfamiliar with the area through which his movement was travelling, given that there is no evidence to suggest that the approach and stop signals were other than fully visible. On the whole of the material before me I can find basis upon which to reduce the penalty assessed by the Company.

For the foregoing reasons the grievance must be dismissed.

11 November 1994

(signed) MICHEL G. PICHER
ARBITRATOR