

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2558

Heard in Montreal, Wednesday, 14 December 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)**

EX PARTE

DISPUTE:

The assessment of 45 demerit marks to Locomotive Engineer M.W. Rainford, resulting in his discharge for accumulation.

COUNCIL'S STATEMENT OF ISSUE:

On June 14, 1994, Mr. Rainford was employed as the locomotive engineer on train 561. On June 21, 1994 the Company performed a download of the event recorders of locomotives of train 561, allegedly as a result of a complaint.

On June 27, 1994, Mr. Rainford was required to provide a formal statement in connection with the circumstances surrounding the alleged violation of permissible operating speeds at numerous locations on the Hagersville Subdivision and Stelco Spur and Hydro Spur, per Great Lakes Region Timetable No. 50 and Daily Operating Bulletin No. 3884 of 14 June 1994, while employed as locomotive engineer on Train 561 on 14 June 1994.

Following the investigation, Mr. Rainford was assessed 45 demerit marks, resulting in his discharge for accumulation.

The Brotherhood requested that the Company reevaluate their position by utilizing an alternative form of discipline in order to allow the grievor to be reinstated. The Brotherhood based their appeal on various mitigating factors.

The Company declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:

(SGD.) C. HAMILTON
GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. Bateman	– Human Resources Officer, Toronto
K. Peel	– Counsel, Toronto
A. E. Heft	– Manager, Labour Relations, Toronto
D. Berard	– Manager, Train Engine Services, Toronto

And on behalf of the Brotherhood:

P. Hunt	– Counsel, Ottawa
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C. Hamilton – General Chairman, Toronto
M. W. Rainford – Grievor

AWARD OF THE ARBITRATOR

The evidence discloses that Locomotive Engineer Rainford was responsible for speeding violations during the course of his tour of duty on June 14, 1994. He was, in the circumstances, deserving of a serious measure of discipline, up to and including the point of dismissal.

The only issue is the appropriate measure of discipline in the circumstances. In this regard there are factors which, in the Arbitrator's view, merit consideration. Mr. Rainford is an employee of seventeen years' service. The record confirms that speeding violations are treated seriously, but that they do not, in all cases, result in the assessment of demerits which render an individual liable to discharge. The Union has placed before the Arbitrator at least two instances where the Company had recourse to the suspension of employees guilty of speeding infractions, where it was clear that the assessment of demerits would, by reason of their prior record, have placed them in a dismissable position.

There is a further element to be considered in mitigation. It is common ground that the grievor's record stood at twenty-five demerits, by reason of the assessment of discipline for an incident which is the subject of **CROA 2557**. At the time of the speeding infractions which are the subject of this grievance, Locomotive Engineer Rainford was within four days of seeing twenty of the twenty-five demerits removed from his record as a result of one year of discipline-free service. He would not, in that circumstance, have been dismissed as a result of the imposition of forty-five demerits for his speeding infractions. In the circumstances of this case, having further regard to the length of the grievor's service, the Arbitrator is not convinced that three hundred and sixty-one discipline free days should necessarily count for nothing. The efforts of Mr. Rainford at remaining discipline free just short of a year can properly be taken into consideration. That is particularly so in light of the evidence respecting the contrary treatment of other employees found guilty of speeding, whose disciplinary records were comparable to his own, insofar as the potential for dismissal is concerned.

For the foregoing reasons the Arbitrator deems that a reduction in penalty is not inappropriate, and that a substantial period of suspension should have the desired rehabilitative effect. The Arbitrator therefore directs that Mr. Rainford be reinstated into his employment, without compensation or benefits, and without loss of seniority.

16 December 1994

(signed) MICHEL G. PICHER
ARBITRATOR