

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2559

Heard in Montreal, Wednesday, 14 December 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The assessment of 20 demerit marks to the discipline record of Conductor T. Slywka, effective 3 February 1993, resulting in his discharge effective 12 March 1993, for accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

Effective 3 February 1993, Conductor Slywka was assessed 20 demerit marks for "failure to comply with the instructions of a supervisor" at Frontier Yard, while assigned as Conductor on Train 332. Subsequent to the imposition of 20 demerits the grievor was discharged for accumulation of demerit marks.

The Union appealed the dismissal of Conductor Slywka on the grounds that the assessment of 20 demerits is unwarranted. In the alternative, the Union states that the discipline is excessive. In view of all the circumstances of this case the Union requests that the grievor should be reinstated.

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

FOR THE COUNCIL:

(SGD.) G. BINSFELD

FOR: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) A. E. HEFT

FOR: VICE-PRESIDENT, GREAT LAKES REGION

There appeared on behalf of the Company:

R. Bateman	– Human Resources Officer, Toronto
A. E. Heft	– Manager, Labour Relations, Toronto
J. Sauvé	– Manager, CMC, Toronto

And on behalf of the Union:

G. Binsfeld	– Secretary/Treasurer, GCA, King City
M. K. Hayes	– President, Local 483, Toronto
T. Slywka	– Grievor

AWARD OF THE ARBITRATOR

This grievance arises because of discipline assessed against Conductor Slywka by reason his alleged failure to comply with the instructions of the Conrail trainmaster in Frontier yard in Buffalo on February 3, 1993. It is common ground that the grievor's train included three dimensional loads. According to Mr. Slywka's account he was unsure of the orders to be followed with respect to the treatment of the dimensional loads, insofar as movement over Conrail track to the Canadian border was concerned. Consequently, he submits, he was attempting to secure further information in respect of the handling of the dimensional loads when he failed to comply with a directive of the Conrail trainmaster to proceed to his train and await any waybills required for his train, which would be sent to him.

It appears that the view of the Company was coloured, at least in part, by the following report which it received in respect of what occurred at Frontier yard:

Discussions with Conrail Trainmaster D. Riggs, train 332 was ordered for 0130 hours and was built. At 0230 hours Trainmaster Riggs went looking for the conductor and found him upstairs with the clerks having coffee and it was indicated that he was waiting for documentation. Trainmaster Riggs then instructed Conductor T.M. SLYWKA to get on the power and double over the train and that the necessary documentation would be cabbed up to Bailey Avenue. At 0320 hours, as the power for train 332 had still not moved, the trainmaster indicates that he again went looking for the conductor and found him still up with the clerks. Trainmaster Riggs indicates that this is the third occasion where he has had trouble with this employee and has therefore indicated that this employee is barred from Conrail property.

The material before the Arbitrator discloses, however, that the incident was not quite as culpable as the above report would suggest. The ultimate statement of the trainmaster, Mr. D.E. Riggs, filed in evidence is substantially less inculpatory than the report which the Company appears to have relied upon. It does suggest that Mr. Slywka was delayed some fifty-five minutes by reason of his confusion over the handling of the dimensional loads, a matter which he plainly conveyed to Mr. Riggs at 3:05 a.m., as confirmed in Mr. Riggs' own statement. It also appears that the three occasions referred to in the report are in fact all part of the single incident of February 3, 1993. The evidence does not disclose a deliberate and willful attempt to be unproductive.

The fact remains that the evidence discloses that Mr. Slywka did fail to carry out the directive initially given to him by Trainmaster Riggs. While that action would, by itself, have been deserving of some measure of discipline, it is less than clear to the Arbitrator that it should have resulted in the grievor's discharge, given the nature of the uncertainty which motivated his delay. In the circumstances I am satisfied that a substitution of penalty is not inappropriate. In light of the grievor's prior record and limited service, however, this is not a case, in my view, for an order in respect of compensation.

The Arbitrator therefore directs that the grievor be reinstated into his employment, forthwith, without loss of seniority and without compensation for wages and benefits lost. His disciplinary record shall stand as it was before the incident giving rise to his discharge.

16 December 1994

(signed) MICHEL G. PICHER
ARBITRATOR