

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2623

Heard in Calgary, Wednesday, 10 May 1995

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Appeal the 6 month suspension and restriction to yard service assessed Locomotive Engineer J.E. McDonald of Vancouver, B.C. for violation of Canadian Rail Operating Rules (CROR) 13(iv), 14(l) and 564(a) & (d) on September 22, 1991.

JOINT STATEMENT OF ISSUE:

On September 22, 1991 Mr. McDonald was employed as locomotive engineer on Train 303 on the Yale Subdivision when the train derailed at mileage 80.5 due to a broken rail. The download of the event recorder revealed that the crew violated the following CROR Rules during their tour of duty: Rule 564(a) at signal 775; Rule 564(d) after passing signal 775; Rule 14(l) at the crossing west of signal 775; and Rule 13(iv) at the crossing west of signal 775.

Following an investigation, Mr. McDonald was assessed a six-month suspension and restricted to yard service for: "Violation of CROR Rules 13 (iv), 14(l), 564(a), 564(d), September 22, 1991."

The Brotherhood has appealed the discipline on the grounds that it is too severe.

The Company has declined the appeal.

FOR THE COUNCIL:

(SGD.) M. W. SIMPSON
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) B. LAIDLAW
FOR: SENIOR VICE-PRESIDENT, WESTERN CANADA

There appeared on behalf of the Company:

B. Laidlaw	– Labour Relations Officer, Edmonton
R. Reny	– Labour Relations Officer, Edmonton
A. Wagner	– Alberta District Transportation

And on behalf of the Council:

M. W. Simpson	– Vice-General Chairman, Saskatoon
D. Shewchuk	– Vice-General Chairman, Saskatoon

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator confirms that the grievor's train derailed while travelling at 30 mph, twice the speed allowable in a restricted speed zone. The incident, apparently caused by a broken rail, involved the derailment of sixteen cars, including one car carrying a dangerous commodity, resulting in damages in excess of two million dollars.

It is clear from the evidence that the grievor made a false assumption upon proceeding past stop signal 775, pursuant to a CROR rule 564 authority. It is not disputed that the stop aspect reflected by the signal was caused by the break in the rail. However, upon seeing a signal maintainer apparently working on signal 775, and being aware that three other trains had passed through the area without incident, Locomotive Engineer McDonald concluded that the problem must be with the signal, and not with the track, and consciously decided to increase to track speed. As the results disclose, his assumption was wrong and his decision to disregard the restricted speed had disastrous consequences.

The Arbitrator is also satisfied that the grievor proceeded in violation of rules 13(iv) and 14(1) of the CROR, as well as CROR 564(a) and 564(d). In all of the circumstances, notwithstanding the grievor's twenty-two years of prior service, the Arbitrator finds, given the seriousness of the incident, that the assessment of the six month suspension and service restrictions imposed by the Company were an appropriate disciplinary response, and that the grievance must therefore be dismissed.

May 18, 1995

(signed) MICHEL G. PICHER
ARBITRATOR