

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2634

Heard in Calgary, Thursday, 11 May 1995

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

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

### **DISPUTE:**

Appeal of the forty demerits assessed on January 15, 1991 to Conductor L.C. Wheeler and Assistant Conductor E.A. Willoughby of Vancouver, B.C. for violation of CROR Rule 429 at Stop Signal 37 on the Yale Subdivision on January 2, 1991.

### **JOINT STATEMENT OF ISSUE:**

On January 2, 1991, the grievors were situated on the head-end of train 260 travelling eastward from Thornton Yard to Boston Bar. The train passed the approach signal to Trafalgar at mile 39.2 which displayed a "Clear to Stop" indication. As the train approached the west switch Trafalgar at mile 37 the locomotive engineer made successive brake applications to slow the movement. The signal at the west end of Trafalgar at mile 37 displayed "Stop" and approximately 700-1,000 feet from the signal the locomotive engineer applied an emergency application of the brakes. Just prior to train 260 stopping at the home signal the slack ran in and pushed the engine consist eight (8) to ten (10) feet past the stop signal.

Following an investigation into the incident, the grievors were assessed forty (40) demerits for violation of CROR Rule 429 at stop signal 37 on the Yale Subdivision on January 2, 1991.

The Union appealed the discipline on the grounds that the discipline assessed was unwarranted and, in any event, excessive given the circumstances.

The Company denied the Union's appeal on behalf of both grievors.

### **FOR THE COUNCIL:**

**(SGD.) M. G. ELDRIDGE**  
**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

And on behalf of the Council:

M. G. Eldridge – Vice-General Chairperson, Edmonton

C. S. Lewis – Secretary, G.C.A., Edmonton

**AWARD OF THE ARBITRATOR**

For reasons related in prior awards, the Arbitrator accepts that the violation of CROR 429 is a cardinal rule violation which merits a serious degree of discipline. As in any case of discipline, however, regard must be had to any mitigating factors. The evidence before the Arbitrator indicates that the passing of the stop signal at mile 37, Trafalgar, by some eight to ten feet was principally caused by the error of judgment of the locomotive engineer in train handling as he approached the signal. While the grievors are not absolved of their responsibility in this matter, and it is true that they were not suspended for a substantial period of time, as was the locomotive engineer, the Arbitrator is of the view that the assessment of forty demerits is somewhat excessive in the circumstances. A review of prior awards in similar cases (see **CROA 2356**) indicates that the historical range of demerits for infractions of UCOR 292 and CROR 429, has been between thirty and fifty-five. In my view this is a case in which it is appropriate to assess discipline in the lower end of the range.

For the foregoing reasons the Arbitrator directs that the discipline assessed against the grievors be reduced to thirty demerits.

May 18, 1995

**(signed) MICHEL G. PICHER**  
ARBITRATOR