

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2659

Heard in Montreal, Tuesday, 10 October 1995

concerning

VIA RAIL CANADA INC.

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of 30 demerit marks assessed to the record of P. Danné, for violation of CROR 104(a) and (h) effective January 24, 1993, resulting in his discharge for accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

On January 24, 1993, Mr. Danné operated as Assistant Conductor on Train 188 which operated over the Mosborough, Guelph Subdivision. During this trip, at approximately 22:00 hours, he handled the East siding switch at Mosborough to align the switch for Train 188 to leave the siding.

Between 22:00 hours and 03:50 hours the next morning, no other trains or track units used the main track in the vicinity of Mosborough.

At approximately 03:50 on January 25, Train 422, CN Extra 5030 East, operating on an unrestricted OCS clearance, encountered the East switch at Mosborough at Mileage 53.64, lined for movement from the siding. The crew was unable to stop the train before it ran through and damaged the switch.

Following an investigation conducted January 29, 1993, it was determined that Assistant Conductor Danné violated CROR Rule 104(a) and (h) when he left the East siding switch at Guelph aligned for the siding.

The Union contends that the grievor, to the best of his recollection, realigned the switch at Mosborough.

The Union further contends that the allegations against Mr. Danné have not been substantiated to a reasonable degree and, even if they were, discharge for accumulation of demerits is not the appropriate discipline.

The Corporation disagrees with the Union's contention.

FOR THE UNION:

(SGD.) G. F. BINSFELD
FOR: GENERAL CHAIRMAN

FOR THE CORPORATION:

(SGD.) K. TAYLOR
FOR: DEPARTMENT DIRECTOR,
LABOUR RELATIONS & HUMAN RESOURCES SERVICES

There appeared on behalf of the Corporation:

K. Taylor – Senior Advisor & Negotiator, Labour Relations, Montreal
J. Ouellet – Senior Labour Relations Officer, Montreal
M. Tessier – Witness

And on behalf of the Union:

G. F. Binsfeld – Secretary/Treasurer, GCA, Fort Erie
G. Bird – Vice-General Chairperson, Montreal
P. Danné – Grievor

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that the grievor did fail to properly line the east switch at Mosborough, at mileage 53.64, for the main line, resulting in damage to the switch. He was, in my view, deserving of a severe degree of discipline, given his violation of CROR Rule 104.

Upon a review of the record, however, the Arbitrator is of the view that a substitution of penalty is appropriate in the case at hand. Although the grievor is not a long service employee, the benefit of the doubt would suggest that in the circumstances a substantial suspension, in lieu of discharge, should bring home to him the gravity of his conduct in violation of an important operating rule. He must, of course, appreciate that any similar infractions in future will attract the most serious of consequences.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment, without compensation for wages or benefits lost, and without loss of seniority, with his disciplinary record to stand at forty-five demerits, regard being had to the award in **CROA 2658**.

October 13, 1995

(signed) MICHEL G. PICHER
ARBITRATOR