

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2693

Heard in Montreal, Wednesday, 10 January 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Appeal the assessment of 35 demerits to Locomotive Engineer K.L. Porter of Vancouver, B.C. for failing to comply with the requirements of CROR Rules 142(b) and 311(b) resulting in the unauthorized movement of Psgr. Extra GCRC 7498 East within the limits of Track Occupancy Permit No. 726 on July 27, 1993.

JOINT STATEMENT OF ISSUE:

On July 27, 1993, Locomotive Engineer K.L. Porter was employed as "second engineer" on the Great Canadian Railtour Company Passenger Train 7498 (GCRC) running from Vancouver to Kamloops through the CP Cascade Subdivision. In order to provide knowledge of the physical characteristics of the unfamiliar CP trackage, a CP locomotive engineer was called to pilot the CN crew.

After entering CP trackage at Sapperton, with CP Pilot B.J. Penner at the controls, the train proceeded in excess of 9 miles into work limits protected by Track Occupancy Permit No. 726, without authorization.

Following an investigation into the incident, Mr. Porter was assessed 35 demerits for failing to comply with the requirements of CROR Rules 142(b) and 311(b) resulting in the unauthorized movement of Psgr. Extra GCRC 7498 East within the limits of Track Occupancy Permit No. 726 on July 27, 1993.

It is the Brotherhood's position that the discipline assessed should reflect the degree of responsibility for those involved in a CROR infraction and therefore requests that the discipline be expunged.

The Company disagrees and has declined the appeal.

FOR THE BROTHERHOOD:

(SGD.) W. A. WRIGHT
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. B. BOYD
SENIOR VICE-PRESIDENT, CN WEST

There appeared on behalf of the Company:

J. Torchia – Manager, Labour Relations, Edmonton
R. Reny – Labour Relations Officer, Edmonton

And on behalf of the Brotherhood:

W. A. Wright – General Chairman, Saskatoon
M. W. Simpson – Vice-General Chairman, Saskatoon
G. Hallé – Canadian Director, Ottawa

AWARD OF THE ARBITRATOR

The Arbitrator must agree with the submission of the Company with respect to the general principles which govern the assessment of discipline in this case. While the evidence reveals that Locomotive Engineer Porter was acting in the capacity of second engineer, and that his passenger train was moving over CP Rail territory with which he was not familiar, by reason of which a CP locomotive engineer who was called to pilot the movement was at the controls of the locomotive, it was nevertheless the grievor's obligation to remain aware, at all times, of the whereabouts of his train. It is clear that, for whatever reason, Mr. Porter lost a proper understanding of his train's location, and was unaware that it had entered restricted track occupancy limits at high speed in circumstances which might have resulted in serious damage or injury. Clearly, in these circumstances, the grievor cannot be held to a substantially lower level of responsibility than the first engineer, nor can he shelter his error from disciplinary consequences because of the presence of a pilot who was in control of his train's movement. The Arbitrator cannot see in any of these factors any compelling basis for a reduction of the penalty assessed against Mr. Porter.

There is, however, another factor which does have mitigating impact. It is common ground that Locomotive Engineer Porter is an employee with forty-two years of service. Remarkably, it is not disputed that during that entire career he has never once been assessed any discipline. On that basis, it appears to the Arbitrator that there is reason to consider whether the disciplinary consequences to be visited upon Mr. Porter should not be somewhat reduced, as compared with First Locomotive Engineer Cooper, who was also assessed thirty-five demerits. By the Company's own admission, it viewed Mr. Cooper, whose disciplinary record was clear at the time, as equal to Mr. Porter from the standpoint of prior record and service. The Arbitrator has some difficulty agreeing with that judgement, given the extraordinary prior record of Mr. Porter, touched upon above. In all of the circumstances, while I am satisfied that Mr. Porter could not be viewed as less responsible than Mr. Cooper, nevertheless his forty-two year record of discipline free service did merit special consideration with respect to the assessment of the quantum of demerits against him. In the circumstances the Arbitrator is satisfied that the assessment of twenty-five demerits against Mr. Porter would be more appropriate, as a means of allowing some consideration for his prior clear record sustained over forty year's service. While that measure of demerits places him slightly above the twenty demerits assessed against Assistant Conductor Green, it strikes a reasonable balance between his level of responsibility and the obvious special merit of his prior service.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor's record be amended to reflect the assessment of twenty-five demerits for the incident of July 27, 1993.

January 12, 1996

(signed) MICHEL G. PICHER
ARBITRATOR