

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2699

Heard in Montreal, Wednesday, 14 February 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

EX PARTE

DISPUTE:

Discipline (30 demerits) assessed D. Powers effective April 21, 1992 for causing delay to switching at Ford of Canada.

COUNCIL'S STATEMENT OF ISSUE:

On April 21, 1992 the grievor was the conductor on Road Switcher 574. A delay in the switching of the Ford Motor Plant at Talbotville occurred. The grievor was assessed 30 demerits for his responsibility in the delay to the switching operation.

The Union appealed the severity of the discipline in view of the fact that the supervisor at the Talbotville location was unfamiliar with the operation at Talbotville. A personality conflict occurred between the Supervisor and the grievor leading the Union to conclude that the responsibility for the switching delay should be a shared one.

The Union argued that the grievor had not received the benefit of a fair and impartial hearing into the charges against him.

The Union submitted that the discipline assessed the grievor was too severe and that a written reprimand would more adequately meet the remedial needs of the Company in this case.

The Company has declined all appeals on this issue.

FOR THE COUNCIL:

(SGD.) M. P. GREGOTSKI
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

R. E. Bateman	– Labour Relations Officer, Toronto
P. E. Marquis	– Labour Relations Officer, Toronto
M. Stock	– Labour Relations Analyst, Toronto
N. Davies	– Manager, Train Service, Sarnia
B. Hamilton	– Manager, Train Service, Sarnia

And on behalf of the Council:

G. F. Binsfeld	– Secretary/Treasurer, GCA, Fort Erie
M. P. Gregotski	– General Chairperson, Fort Erie
G. B. Anderson	– Local Chairperson, London

D. Powers

– Grievor

AWARD OF THE ARBITRATOR

The material before the arbitrator establishes, beyond any substantial doubt, that the grievor knowingly and willfully engaged in an insubordinate course of conduct by refusing to follow the directions given to him by Manager-Train Services Brian Hamilton while the grievor was in charge of Road Switcher 574 at the Ford Plant, Talbotville, on April 21, 1992. Very simply, Mr. Powers refused to follow the directions given to him by his supervisor with respect to postponing the taking of his lunch, so as to complete a time-sensitive switch at Doors 1 and 2 of the Ford Plant. The switch in question, which involved the marshalling of eight cars, would have required some forty minutes.

The failure of the grievor and crew to follow the orders given to them caused substantial embarrassment and cost to the Company. As a result of their actions, the Ford Motor Plant ran out of parts and was required to shut its assembly line for in excess of an hour and a half. The shut down, estimated to have occasioned a loss of production of some fifty-five automobiles, resulted in the Company being required to pay the customer the amount of \$18,913.00. Further, the Company received, shortly thereafter, a letter from the Ford Motor Company advising that the grievor was banned from its property for a period of three years.

At the time of the above incidents Mr. Powers had less than three years' service with the Company. He then had twenty-five demerits on his record, accumulated by reason of three separate instances of discipline, generally in relation to time-keeping and availability for duty.

The Arbitrator can see no compelling mitigating factors to reduce the discipline in the instant case. Plainly the grievor knew, or reasonably should have known, that it was his obligation to perform the work assigned to him and, if necessary, to grieve any alleged mistreatment at the hands of his supervisor. It should be stressed, however, that the Arbitrator can find nothing in the evidence which would support the view that the grievor was in fact harassed or mistreated by Mr. Hamilton. On the contrary, the unchallenged evidence appears to be that the switching burden assigned to the grievor and his crew on that day was lighter than usual. The essence of what transpired, in the Arbitrator's view, is the playing out of a history of bad feeling towards Mr. Powers' supervisor, apparently in furtherance of a threat which was made earlier. It does not appear disputed that during the course of a previous disagreement about overtime, apparently on April 15, 1992, when Mr. Hamilton advised Mr. Powers and his crew that they would not be given a three hour quit plus an hour's overtime, the grievor stated, according to Mr. Hamilton's report "... if this was the way it was going to be that they would be causing problems such as taking an hour and a half to go to Southwood with the transfer or there would be problems with the doors." Mr. Hamilton went on to record "... they were advised at this time that if the doors were intentionally delayed a formal investigation would be forthcoming." Further, when the grievor and Mr. Hamilton again clashed on the issue of the lunch break, apparently on April 16, the grievor once again made threatening comments about a slow-down in service at the Ford Plant.

The incident for which the grievor was disciplined demonstrates a grave dereliction of duty, coupled with a reckless disregard for the consequences to both the Company and its customer. Given the seriousness of what transpired, in the absence of mitigating factors, the Arbitrator is satisfied that the assessment of thirty demerits was appropriate in the circumstances. The grievance must therefore be dismissed.

February 16, 1996

(signed) MICHEL G. PICHER
ARBITRATOR