

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2742

Heard in Calgary, Thursday, 16 May 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Appeal the assessment of 30 demerits Locomotive Engineer D.J. Warner, for overspeed operation of Extra 4014 West, August 16, 1993.

COUNCIL'S STATEMENT OF ISSUE:

On August 16, 1993, Mr. Warner was employed as locomotive engineer on Test Train Extra 4014 West, consisting of one locomotive and two test cars, operating between Edmonton (Calder Yard) and Edson on the Edson Subdivision. Between Mileage 88.7 and 89 the train exceeded a Temporary Slow Order Speed of 30 MPH.

Following an investigation into the incident, Locomotive Engineer Warner was assessed 30 demerits.

The Brotherhood contends that the discipline assessed is too severe in light of Mr. Warner's long service, work record and previous discipline history. The Brotherhood appealed the discipline requesting that these factors be taken into account and the discipline be altered to reflect a written reprimand for this first offence.

The Company maintains that the grievor was justly dealt with, and has declined the Brotherhood's request.

FOR THE COUNCIL:

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

FOR THE COMPANY:

(SGD.) R. RENY
FOR: SENIOR VICE-PRESIDENT, CN WEST

There appeared on behalf of the Company:

R. Reny	- Labour Relations Officer, Edmonton
S. Blackmore	- Labour Relations Assistant, Edmonton
J. Torchia	- Manager, Labour Relations, Edmonton
J. Dixon	- Labour Relations Officer, Edmonton
B. Barber	- Labour Relations Officer, Edmonton
J. Raynard	- Superintendent, Transportation

And on behalf of the Council:

W. A. Wright	- General Chairman, Saskatoon
M. W. Simpson	- Sr. Vice-General Chairman, Saskatoon
M. King	- Local Chairman, Prince George
D. Shewchuk	- Local Chairman, Vancouver

AWARD OF THE ARBITRATOR

An examination of the record, and in particular the data from the event recorder from Test Train Extra 4014 West, confirms, to the Arbitrator's satisfaction, that Mr. Warner did not, as he claims, "set the air" as his movement approached the slow order territory between Mileage 88.7 and 89 on the Edson Subdivision on August 16, 1993. On the contrary, the data indicates that he proceeded immediately to place his train into full emergency as he entered the restricted speed area at 55 m.p.h. His train passed through the entire area, emerging at 44 m.p.h. at the other extremity, before eventually coming to a stop. Moreover, the evidence of Conductor Holden is entirely inconsistent with the events as they are related by Engineer Warner.

The Council pleads the grievor's prior record and length of service as mitigating factors. It appears that over twenty-one years of service he has only received a written reprimand before the incident which is the subject of this grievance. As a general rule, the Arbitrator agrees that that record would merit close consideration of a reduction of penalty. On a review of the record, however, I am not persuaded that the grievor has been honest and candid in relating his actions in this matter. In that circumstance, the Arbitrator is not inclined to exercise his discretion to consider a reduction of substitution of penalty. The grievance is therefore dismissed.

May 17, 1996

(signed) MICHEL G. PICHER
ARBITRATOR