

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2858

Heard in Calgary, Thursday, 15 May 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]**

DISPUTE:

Appeal of the discipline assessed Mr. M. Melymick of Edmonton, Alberta on 26 July 1995.

JOINT STATEMENT OF ISSUE:

On July 26, 1995, Mr. Melymick was involved in the derailment of RBOX 32015. On 01 August 1995, a formal investigation was conducted into the incident and as a result, Mr. Melymick was assessed discipline in the form of a written reprimand.

It is the Union's position that Mr. Melymick, working as an assistant conductor on 26 July 1995 should not be held responsible for the incident as he was attempting to stop the movement. The Union requests that the discipline assessed be expunged from his record.

The Company disagrees with the Union's position.

FOR THE COUNCIL:

(SGD.) M. G. ELDRIDGE
FOR: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) J. T. TORCHIA
FOR: SENIOR VICE-PRESIDENT, CN

There appeared on behalf of the Company:

D. Lanthier	– Labour Relations Officer, Edmonton
J. T. Torchia	– Manager, Labour Relations, Edmonton
S. Michaud	– Assistant Manager, Labour Relations, Edmonton
J. Dixon	– Assistant Manager, Labour Relations, Edmonton
S. Blackmore	– Labour Relations Officer, Edmonton
D. Van Cauwenbergh	– Labour Relations Officer, Edmonton
K. Morris	– Labour Relations Officer, Edmonton

And on behalf of the Council:

D. Ellickson	– Counsel, Toronto
M. G. Eldridge	– Vice-General Chairman, Edmonton
M. Melymick	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the facts of the grievor's involvement in the partial derailment of a car which he was controlling during the course of a running switch are based upon a statement of the events related to the Company by the conductor on Mr. Melymick's crew. The Company, however, did not provide to the grievor or his Union a copy of the statement which it took from the conductor, thereby denying the grievor the opportunity to rebut the contents of that statement. Article 117 of the collective agreement provides, in part, as follows:

117.1 No employee will be disciplined or dismissed until the charges against him have been investigated; the investigation to be presided over by the man's superior officer. He may, however, be held off for investigation not exceeding 3 days, and will be properly notified, in writing and at least 48 hours in advance, of the charges against him.

117.2 Employees may have an accredited representative appear with them at investigations, will have the right to hear all the evidence submitted and will be given an opportunity through the presiding officer to ask questions of witnesses whose evidence may have a bearing on the employee's responsibility. Questions and answers will be recorded and the employee will be furnished with a copy of the statement taken at the investigation.

The Arbitrator is satisfied that the evidence obtained from the conductor was evidence of a "witness whose evidence may have a bearing on the employee's responsibility" within the meaning of article 117.2. The failure of the Company to bring that statement to the attention of the grievor, or his union representative, and the obvious inability to ask questions in relation to the critical testimony of the conductor, discloses a violation of the standard of a fair and impartial disciplinary investigation contemplated within article 117 of the collective agreement. In the circumstances, I am satisfied that the discipline assessed against the grievor must be found to be a nullity. For these reasons the grievance is allowed. The Arbitrator directs that the written reprimand recorded against Mr. Melymick be stricken from his record.

Dated at Montreal, May 30, 1997

(signed) MICHEL G. PICHER
ARBITRATOR