

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2872

Heard in Montreal, Tuesday, 8 July 1997

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

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

DISPUTE:

The discipline assessed Yard Forman J. Code of Coquitlam, British Columbia.

JOINT STATEMENT OF ISSUE:

On September 24, 1993, Mr. Code had his record debited with 20 demerit marks for exercising poor judgement in his switching duties resulting in heavy impact coupling which damaged equipment and yard trackage, Cascade Subdivision, British Columbia.

The Council contends that the discipline assessed is not warranted and should be reduced.

The Company has declined the Council's request.

FOR THE COUNCIL:

(SGD.) B. L. McLAFFERTY
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. V. HAMPEL
FOR: DISTRICT GENERAL MANAGER

There appeared on behalf of the Company:

R. V. Hampel – Labour Relations Officer, Calgary
M. E. Keiran – Manager, Labour Relations, Calgary

And on behalf of the Council:

B. McLafferty – Vice-General Chairman, Calgary

AWARD OF THE ARBITRATOR

Having carefully reviewed the evidence the Arbitrator is satisfied that the Company is correct in concluding that there was a degree of responsibility on the part of the grievor in the derailment of two units and a car during the course of switching being directed by Yard Foreman Code on September 2, 1993 on Vancouver Yard Assignment 0645. It would appear, on the balance of probabilities, that Yard Foreman Code failed to take into account the weight of his movement, which included two locomotive units as well as six loaded grain cars weighing some 780 tons, as he made a downhill coupling movement into track K8, at the location of a curve. While it appears that the grievor proceeded within the four mile per hour maximum speed for such a move, the circumstances resulted in an extremely rough coupling which caused a derailment and damage to the track.

The facts do, however, suggest that the assessment of twenty demerits should be closely considered. In the Arbitrator's view the fact that the grievor proceeded according to all regulations, giving proper hand signals to the locomotive engineer, and maintaining the speed of his movement within the maximum permissible range, should be taken into account in mitigation. In the result, I am satisfied that the assessment of ten demerits would have been more appropriate for the error of judgement committed by Yard Foreman Code.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor's disciplinary record be amended to reflect the assessment of ten demerits for his error of judgement in switching duties in track K8, at mile 124.9, Cascade Subdivision, on September 2, 1993.

July 16, 1997

(signed) MICHEL G. PICHER
ARBITRATOR