

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2915

Heard in Calgary, Thursday, 13 November 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (UNITED TRANSPORTATION UNION)

DISPUTE:

Appeal the Company's decision to assess 35 demerits to Conductor A.E. Tepper of Winnipeg, Manitoba, for failure to comply with Canadian Rail Operating Rules, General Notice and CN 696 General Operating instructions 5.10(c), on October 5, 1995.

JOINT STATEMENT OF ISSUE:

On November 15, 1995, Mr. Tepper attended an employee statement in connection with circumstances surrounding his tour of duty as a conductor on train 115, Sioux Lookout to Symington, October 5, 1995. Mr. Tepper was subsequently assessed 35 demerits for failure to comply with Canadian Rail Operating Rules, General Notice and CN 696 General Operating Instructions 5.10(c).

The Union contends that the discipline assessed to Mr. Tepper is too severe.

FOR THE COUNCIL:

(SGD.) M. G. ELDRIDGE

FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. TORCHIA

FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. VanCauwenbergh	– Labour Relations Officer, Edmonton
J. Torchia	– Manager, Labour Relations, Edmonton
J. Dixon	– Assistant Manager, Labour Relations, Edmonton
K. Morris	– Labour Relations Officer, Edmonton
S. Blackmore	– Labour Relations Officer, Edmonton

And on behalf of the Council:

M. G. Eldridge	– Vice-General Chairman, Edmonton
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AWARD OF THE ARBITRATOR

The material establishes, beyond controversy, that Conductor Tepper was responsible for a serious rules violation, by failing to take immediate steps to inspect a locomotive wheel, notwithstanding that he had received two separate communications to the effect that his movement had a flat wheel on the second unit. The grievor was clearly in violation of General Operating instructions 5.10(c), which requires the immediate inspection of any dangerous condition reported, and also deviated from the safe course as mandated by the CROR.

The only issue to be resolved is the quantum of discipline. The record discloses that the locomotive engineer involved, who, in the Company's view, bore a greater degree of responsibility, was assessed a higher measure of demerits in the case at hand. There are, however, further mitigating circumstances to be considered in respect of Conductor Tepper. Foremost among them is that he is a long service employee, being sixty-three years of age, having first been hired in June of 1964, with a scheduled retirement from the Company in 1998. Significantly, during his entire career of some thirty-one years, the grievor has been assessed discipline on only four occasions. None of those exceeded the assessment of fifteen demerits, the most recent of which was some seven years prior to the facts giving rise to this grievance. In the Arbitrator's view the length and quality of the grievor's prior service merits substantial consideration in determining the appropriate measure of discipline to apply in this case. In my view the assessment of twenty demerits would be amply sufficient to communicate to Conductor Tepper the importance of adhering to the CROR and General Operating Instructions in similar circumstances in the future. There is little reason to doubt that that measure of demerits will have the appropriate rehabilitative effect, in light of his long record of responsible service.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the discipline assessed against Conductor Tepper be reduced to twenty demerits.

November 25, 1997

(signed) MICHEL G. PICHER
ARBITRATOR