

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2916

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 30 demerits to Assistant Conductor J.K. Bell of Edmonton, Alberta, for violation of CROR Rule 105 and Vegreville Subdivision Footnote 5.2, on February 6, 1995.

JOINT STATEMENT OF ISSUE:

On February 6, 1995, Mr. Bell attended an employee statement in connection with circumstances surrounding the derailment of six cars at mile 0.8 Scotford Industrial Lead, during his tour of duty as Assistant Yard Conductor on the 0700 Scotford Yard assignment, on February 6, 1995. Mr. Bell was subsequently assessed 30 demerits for violation of CROR 105 and Vegreville Subdivision Footnote 5.2.

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

The Company does not agree.

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:

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| 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:

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

The Arbitrator is satisfied, on the basis of the material filed, that the grievor, who is not a long service employee, did commit serious errors of judgement, in the operation of his movement during the performance of the 0700 Scotford Yard assignment on February 6, 1995, resulting in a collision and derailment. The evidence discloses that he paid inadequate attention to the overspeed of his train from his leading position in the caboose. He failed to observe that his movement was lined for a spur which was occupied by a number of cars, and took no action when his work-mate, Conductor R.J. McIntyre erroneously instructed the locomotive engineer by radio that the movement had substantial room in which to proceed, when in fact it was lined on a collision course into stationary cars located in the spur.

There is, however, one mitigating factor to be taken into account. The evidence discloses that the primary responsibility for the collision and derailment rests with Conductor McIntyre. In the circumstances, I am satisfied that the assessment of twenty demerits would be more appropriate for the level of responsibility of the grievor, as reflected in the evidence.

The grievance is therefore allowed, in part. The Arbitrator directs that Assistant Conductor Bell's discipline be revised to reflect the assessment of twenty demerits.

November 25, 1997

(signed) MICHEL G. PICHER
ARBITRATOR