

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2933

Heard in Montreal, Thursday, 12 February 1998

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS  
(UNITED TRANSPORTATION UNION)**

### **DISPUTE:**

Appeal of the Company's decision to assess Yard Conductor A. Lorman of Saskatoon, Saskatchewan, a three week suspension and thirty (30) demerits for violation of CROR Rule 104 (K) and 114(A) on September 26, 1996.

### **JOINT STATEMENT OF ISSUE:**

On September 26, 1996, Yard Conductor Lorman's movement collided with Train 530. On September 30, 1996 the Company conducted an investigation and subsequently assessed Mr. Lorman's record with 30 demerits and a suspension.

The Union's position is that Mr. Lorman is a long service employee and his record was clear at the time of the incident. The Union further submits that the Company penalised Mr. Lorman twice for the same incident. The first being a three week suspension and the second the issuance of thirty (30) demerits. The Union submits that the discipline assessed to Mr. Lorman was excessive and requests it be mitigated to a lesser degree and his record be made whole.

The Company does not agree.

### **FOR THE COUNCIL:**

**(SGD.) M. G. ELDRIDGE**

**FOR: GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(SGD.) J. B. DIXON**

**FOR: SENIOR VICE-PRESIDENT, CN RAIL**

There appeared on behalf of the Company:

K. Morris	– Labour Relations Officer, Edmonton
J. B. Dixon	– Assistant Manager, Labour Relations, Edmonton
J. Edgar	– Assistant Superintendent, Transportation, Melville

And on behalf of the Council:

D. Ellickson	– Counsel, Toronto
M. G. Eldridge	– Vice-General Chairman, Edmonton
R. Donegan	– Local Chairman, Saskatoon
A. Lorman	– Grievor

### **AWARD OF THE ARBITRATOR**

The material before the Arbitrator confirms that Conductor Lorman was in charge of the tramp yard assignment in Saskatoon Yard on September 26, 1996, and was responsible for his movement, operated by belt pack, being involved in a low speed collision with train 530 on the east lead. The grievor was pulling rail cars from track SC14, moving them onto the east lead, in circumstances where he did not have clear visibility of the head end of his movement, when his assistant conductor was elsewhere. The collision caused some \$47,000.00 in damage to the locomotive consists, the tracks and caused the derailment of at least one car.

The Arbitrator is satisfied that the grievor was responsible for violations of CROR rules 104(K) and 114(A) as reflected on the evidence adduced. The sole issue is the appropriate measure of discipline. In the case at hand the Company assessed thirty demerits against the grievor. It also held him out of service for three weeks, treating that period as a disciplinary suspension in addition to the assessment of demerits.

The Arbitrator must agree with the Council that that combined discipline seems excessive in the circumstances. Mr. Lorman had been discipline free for a period of some ten years prior to the incident in question, but for a single infraction in 1993 which attracted ten demerits. In my view the assessment of thirty demerits, which is half way to discharge, would have been amply sufficient to serve the rehabilitative purpose of bringing home to the grievor the importance of vigilance and care in respect of the observance of fundamental operating rules.

The grievance is therefore allowed, in part. The Arbitrator directs that the thirty demerits registered against the grievor's record be retained, and that he be compensated for wages and benefits lost in respect of the three week suspension assessed against him, the suspension to be rescinded from his record.

February 16, 1998

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**