

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2950

Heard in Calgary, Wednesday, 13 May 1998

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

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

### **DISPUTE:**

Appeal of the discipline, 45 day suspension, assessed to Assistant Conductor S.M. Law of Winnipeg, Manitoba on March 26, 1997.

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

On March 26, 1997, the crew on train C77041-25 was instructed to run around part of their train at Emerson Yard Manitoba and shove the rail cars onto the Emerson extension track. As the movement was being shoved eastward onto the Emerson extension, the lead car (BN 533006) derailed on a crossing. Shortly thereafter, Mr. Law and crew pulled the rail cars, including the derailed equipment, off the extension track, which resulted in track damage and damage to bridge structure. Assistant Conductor S.M. Law was assessed a 45 day suspension for failure to ensure a proper job briefing was conducted as defined in CN Operating Manual, CN West Regional Data Section, Special Instructions, page 28, Item 1, Job Briefing – Field and Operating Manual Job Aid Section, resulting in a violation of GOI Item 5.11(c), CROR rules 103 115 and 106(d), CROR General Notice, General Rule A (viii) and failure to accept any responsibility for the derailment on March 26, 1997

The Council contends that the discipline assessed Assistant Conductor S.M. Law was in violation of article 117.1 of agreement 4.3 and that the discipline was excessive. The Council also requests the grievor be reimbursed for the loss of wages and benefits during the time of suspension (45 days).

The Company denies the Council's contentions and declines the Council's request.

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

**(SGD.) D. VAN CAUWENBURGH**  
**FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

D. Van Cauwenbergh	— Labour Relations Officer, Edmonton
J. Torchia	— Director, Labour Relations, Edmonton
J. Dixon	— Assistant Manager, Labour Relations, Edmonton
S. Blackmore	— Labour Relations Officer, Edmonton
J. Bauer	— Human Resources Business Partners, Great Plains District, Transportation, Edmonton

And on behalf of the Council:

M. G. Eldridge	— Vice-General Chairperson, Edmonton
B. J. Henry	— General Chairperson, Edmonton

## **AWARD OF THE ARBITRATOR**

The facts of the instant grievance are related in **CROA 2949**. The material establishes that Assistant Conductor Law was involved in the switching and spotting of coal empties in Emerson Yard on March 26, 1997, resulting in the derailment of several cars, and substantial damage to track and bridges, totalling approximately \$120,000.00.

The thrust of the Council's position is that as assistant conductor Mr. Law had little or no responsibility for what occurred, or ability to prevent the derailing of the lead car which the crew pushed into the Emerson extension spur at the head of a cut of some fifty-seven empties.

With that submission the Arbitrator cannot agree. It is evident that Assistant Conductor Law bears responsibility for ensuring that the crew of which he is a part operates in a reasonably safe manner, and in particular that it take proper cognizance of features which can be a hazard, such as the crossing, whose icy condition triggered the derailment of the car, which subsequently caused the extensive damage to the Company's property, as well as to two cars of another railway. The sole issue, in my view, is the appropriate measure of discipline.

When that issue is considered there are mitigating factors which do bear some weight. Assistant Conductor Law is an employee of some twenty-four years' service who, it appears, has never previously been disciplined for any rules violation. The record discloses that he has been assessed only ten demerits over his entire career, apparently relating to a discrepancy in hotel room charges. In the circumstances I am satisfied that the assessment of a forty-five day suspension is excessive, given the length and quality of the grievor's prior service and disciplinary record. The Arbitrator therefore directs that the suspension assessed against the grievor, for the infractions identified by the Company, be reduced to thirty days, with compensation for wages and benefits in respect of the difference.

May 19, 1998

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