

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2989

Heard in Montreal, Thursday, 15 October 1998

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Appeal of discipline, fifteen (15) demerits, assessed to Assistant Conductor D.G. Davies of Terrace, British Columbia effective July 7, 1997.

JOINT STATEMENT OF ISSUE:

On July 7, 1997 the grievor was working as Assistant Conductor at Kitimat Yard during which time a water car side swiped the grievor's movement. The Company held an investigation on July 15, 1997 and as a result the grievor was assessed 15 demerits for violation of CROR Rule 112 and in addition the grievor was required to discuss the proper application of Rule 112 with all Terrace employees.

The Council's position is that the assessment of 15 demerits, in addition to the grievor having to explain the proper application of Rule 112 to all Terrace employees, is excessive. The Council therefore requests that the demerits assessed to the grievor be removed and his record be made whole.

The Company disagrees.

FOR THE COUNCIL:

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

FOR THE COMPANY:

(SGD.) R. RENY
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. Reny	– Labour Relations Associate, Pacific District, Vancouver
S. Blackmore	– Labour Relations Associate, Great Plains District, Edmonton
J. Dixon	– Business Partner, Pacific District, Vancouver
B. Laidlaw	– HR/LR Associate, LeVerendrye District, Winnipeg

And on behalf of the Council:

M. G. Eldridge	– Vice-General Chairperson, Edmonton
D. Ellickson	– Counsel, Toronto

AWARD OF THE ARBITRATOR

The material presented to the Arbitrator establishes, beyond substantial contradiction, that the grievor was responsible for a violation of rule 112, in that he failed to properly secure a water car which he had separated from his train. The car subsequently rolled free, and side-swiped the grievor's train movement, causing the derailment of one car and damage to six cars totalling in excess of \$30,000.00.

In the circumstances I am satisfied that the assessment of fifteen demerits was within the appropriate range of discipline, and should not be disturbed. The grievance is therefore dismissed.

October 19, 1998

(signed) MICHEL G. PICHER
ARBITRATOR