

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2990

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 Conductor D.G. Davies of Terrace, British Columbia.

JOINT STATEMENT OF ISSUE:

On July 18, 1997 the grievor and crew were required to perform some work at the Eurocan Plant. The grievor was to place some cars into track no. 8 at the plant, however, he did not know how many cars track no. 8 would hold. He was advised from the Plant Supervisor that it would hold 15 cars, however, that information was not correct and as a result one car derailed. The Company held an investigation on July 22, 1997 and as a result the grievor was assessed 15 demerits for violation of CROR Rule 115 and in addition, the grievor was required to discuss the proper application of Rule 115 with all other Terrace employees.

The Council's position is that assessment of demerits and the grievor having to explain the proper application of Rule 115 is excessive and requests that the 15 demerits assessed to the grievor be removed from his record.

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 before the Arbitrator establishes that the grievor was responsible for a violation of CROR Rule 115, by failing to adequately observe the head end of a movement being pushed into a storage track which had insufficient capacity to hold the number of cars in question. It is not disputed that the grievor's oversight resulted in the derailment of one car.

The grievor's explanation for his actions, in part based on the fact that he relied on the advice of the foreman at the plant in Kitimat where the incident occurred is, in the Arbitrator's view, not persuasive. If anything, it tends to show an abandonment of his own responsibility, and the failure to appreciate the need to be vigilant while controlling a movement in circumstances such as those which obtained on July 18, 1997, when the incident occurred. In the result, the Arbitrator cannot see any responsible basis upon which to disturb the assessment of fifteen demerits assessed by the Company. Nor is it possible to give relief against the fact that the grievor was held out of service for some five days. That issue is effectively beyond the Arbitrator's jurisdiction, to the extent that it is not contained within the Joint Statement of Issue, in keeping with the provisions of paragraph 12 of the memorandum of agreement establishing the Canadian Railway Office of Arbitration.

For all of the foregoing reasons the grievance must be dismissed.

October 19, 1998

(signed) MICHEL G. PICHER
ARBITRATOR