

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3048

Heard in Calgary, Tuesday, 11 May 1999

concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**EX PARTE**

### **DISPUTE:**

Claim on behalf of Mr. T. Tinordi.

### **EX PARTE STATEMENT OF ISSUE:**

By way of Form 104 dated February 10, 1998, the grievor was assessed with 40 demerits for allegedly failing to properly carry out his duties as Foreman "as provided in Rules 2.2.5, 2.2.8, 7.3.1 and Section 6 of Form 568 of the Maintenance of Way Rules and Instructions, and Section 2, Rule 1.0 of the General Operating Instructions manual on December 5, 1997, mileage 109.25, Taber Subdivision, Alberta". The assessment of those 40 demerits resulted in the grievor's dismissal for accumulation of demerits. The Brotherhood grieved the assessment of this discipline.

The Union contends that: 1.) The grievor, in order to avoid dismissal, should properly have had his discipline deferred by the Company; 2.) In any event, the discipline assessed was unwarranted and too severe in the circumstances.

The Union requests that the discipline assessed be removed from the grievor's record, that the grievor be reinstated into Company service without loss of seniority, and that the grievor be made whole for all losses incurred as a result of this matter.

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

### **FOR THE BROTHERHOOD:**

**(SGD.) J. J. KRUK**

**SYSTEM FEDERATION GENERAL CHAIRMAN**

There appeared on behalf of the Company:

J. Dragani	– Labour Relations Officer, Calgary
R. M. Andrews	– Manager, Labour Relations, Calgary
D. E. Freeborn	– Labour Relations Officer, Calgary
E. J. MacIsaac	– Labour Relations Officer, Calgary
D. McIntyre	– Track Maintenance Supervisor, Lethbridge
H. Roberts	– Track Maintenance Foreman, Lethbridge

And on behalf of the Brotherhood:

P. Davidson	– Counsel, Ottawa
D. W. Brown	– Sr. Counsel, Ottawa
K. Deptuck	– Vice-President, Ottawa
J. J. Kruk	– System Federation General Chairman, Ottawa
D. McCracken	– Federation General Chairman, Ottawa
W. Brehl	– General Chairman – Pacific Region, Revelstoke

R. Terry

– Local Chairman, Lethbridge

### **AWARD OF THE ARBITRATOR**

The material before the Arbitrator establishes, beyond controversy, that the grievor was involved in the derailment of a hi-rail on the Taber Subdivision on December 5, 1997. More seriously, it appears that the attempt to re-rail the vehicle resulted in a relatively serious injury to the hand of a fellow employee, and that both the employee in question and the grievor thereafter attempted to conceal the incident from the Company. I am satisfied, on a close review of the first investigatory statement taken from Mr. Tinordi, that at the outset he deliberately attempted to mislead the Company, and reversed himself only when other evidence emerged. His actions in that regard clearly go to the level of trust which the Company must have in a person who holds the position of Track Maintenance Foreman, even on a relieving basis. The grievor was plainly in violation of the rules and instructions cited in the disciplinary notice which issued to him, and displayed a lack of trustworthiness to hold, at least for the time being, a position of unsupervised authority over other employees and Company equipment.

In the result, I conclude that the assessment of forty demerits was justified. In light of the decisions of this Office in **CROA 3046** and **3047**, however, I am further satisfied that the grievor should be reinstated into his employment, without loss of seniority and without compensation for wages and benefits lost. Mr. Tinordi's reinstatement, however, is to be on the basis of a demotion from the position of track maintenance foreman for a period of not less than two years, or such lesser period as may be imposed in the discretion of the Company, with his disciplinary record to stand at 55 demerits.

May 14, 1999

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