

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3077

Heard in Montreal, Tuesday, 14 December 1999

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS  
(RAIL CANADA TRAFFIC CONTROLLERS)**

### **DISPUTE:**

An appeal of the discipline assessed to Rail Traffic Controller D. Nantel of Montreal and his subsequent discharge, effective July 8, 1998, further to an accumulation of more than 60 demerit marks.

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

Effective December 3, 1997, 10 demerit marks were assessed to Mr. Nantel's disciplinary record for his repeated unavailability at work for the period between October 5 and November 23, 1997, when assigned to Rail Traffic Controller unassigned board.

Effective April 8, 1998, Mr. Nantel was assessed 15 demerit marks for repeated unavailability at work and early quits between December 30, 1997 and March 20, 1998.

Mr. Nantel was suspended for 30 calendar days on account of having removed the wrong authority of train M31021-21, in effect between Joffre, QC, and Edmundston, NB.

Effective July 8, 1998, 50 demerit marks were assessed to Mr. Nantel's disciplinary record for violations of CROR rules 140 paragraph A, 134 paragraph A and 133 paragraph A, as well as article 5 of the Rail Canada Traffic Controllers Instruction Manual on June 20, 1998.

Since Mr. Nantel accumulated a total of 105 demerit marks, he was discharged effective July 8, 1998 in accordance with the Company's discipline policy.

The Union contends that the discipline assessed in each case is excessive and requests his reinstatement with full seniority and compensation for all time lost.

The Company disagrees with the Union's contentions and has declined the Union's request.

### **FOR THE BROTHERHOOD:**

**(SGD.) P. WOJTOWIEZ**

**FOR: GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(SGD.) D. LAURENDEAU**

**FOR: VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

D. A. Watson	– Consultant
D. Laurendeau	– Labour Relations Associate, Montreal
M. Carrier	– Assistant Superintendent

And on behalf of the Brotherhood:

J. Ruddick	– General Chairman, Burlington
G. Hallé	– Canadian Director, Ottawa
P. Wojtowicz	– Vice-General Chairman, Burlington
M. Pelletier	– Local Representative, Montreal

## AWARD OF THE ARBITRATOR

This arbitration concerns four grievances relating to discipline assessed against the grievor, Rail Traffic D. Nantel of Montreal.

Hired in March of 1985, with thirteen years of service at the time of his dismissal, Mr. Nantel carried an undistinguished disciplinary record prior to the incidents giving rise to the discipline here under consideration. On four previous occasions he was disciplined for absenteeism, receiving ten demerits on two separate occasions for that infraction in September of 1991 and January of 1995. Of equal concern are a number of incidents on the grievor's record relating to rules violations. Significantly, in June of 1997 Mr. Nantel violated operating rules, which resulted in two moving train occupying the same track territory, an obviously dangerous circumstance which could have resulted in a collision. For that infraction he was assessed thirty demerits with his time out of service treated as a suspension.

The first of the four incidents to be considered involves the assessment of ten demerits against the grievor for absenteeism on December 3, 1997. That discipline concerns his record of non-attendance at work in the period between October 5 and November 23, 1997. The record reveals that he was absent on a number of occasions by reason of sickness. However, on at least three occasions he was absent by reason of having to care for his children. While child care is obviously an important responsibility for any individual, persons holding employment must appreciate that their obligations in obtaining the services of babysitters must be discharged in such a way as to allow them to fulfil their obligations to their employer by faithful and assiduous attendance at work. It appears clear that on at least three occasions in November of 1997 the grievor failed in that regard, and in the Arbitrator's view rendered himself liable to discipline. Given his prior record of absenteeism discipline, I am satisfied that the assessment of ten demerits was appropriate in the circumstances.

The second discipline under consideration involves the assessment of fifteen demerits, also relating to the grievor's unavailability for work, on April 8, 1998. That discipline concerned the grievor's absences from work from December 30, 1997 to March 20, 1998. During that time he missed nine days of work and left early on a tenth occasion. Again, it would appear that three occasions of absence were caused by the grievor's failure to provide for appropriate child care for his children. In the Arbitrator's view, as important as such concerns must be, they are not a valid excuse for non-attendance at work. Rather, absent extraordinary circumstances, they must be viewed as a failure on the part of the grievor to plan responsibly to allow himself to be available to fulfil his employment obligations. Given the recidivist nature of this infraction, I am satisfied that the fifteen demerits assessed against the grievor on that occasion were also justified. It may be noted that the accumulation of demerits for both instances of absenteeism brought the grievor's disciplinary record to the level of fifty-five demerits, as he stood at thirty demerits prior to the discipline of December 3, 1997.

The next incident involves rules infractions on the part of Mr. Nantel. It is not disputed that towards the conclusion of his shift on March 21, 1998, as he was handing over his desk to another rail traffic controller, Mr. Nantel mistakenly erased a TGBO computer entry for train 310, involving its movement between Joffre and Edmunston. His error in that regard resulted in the train moving across the territory in question without the protection of TGBO 2918. In that circumstance, for example, newly assigned track occupancy permits or slow orders would not have been communicated to the crew, an obviously dangerous situation which, fortunately, did not in fact result in any accident or incident. The grievor's error was spotted by another RTC upon receiving radio communication from train 310, and a system correction was immediately made. Given that the grievor's record then stood at fifty-five demerits, to avoid his discharge he was assessed a thirty day suspension for his error.

In the Arbitrator's view that assessment of discipline was entirely justified. Bearing in mind that the grievor is not an employee of substantial long service, and that he had previously been disciplined for rules infractions, one of which might have resulted in a collision, there is little reason for an arbitrator to interfere with a company's judgement in respect of the discipline assessed for his mistake of March 21, 1998, which could have substantially imperilled a train and its crew. The Arbitrator therefore dismisses the grievance with respect to that incident.

The final incidents resulting in discipline against Mr. Nantel arose on June 20, 1998. It is not disputed that on that date Mr. Nantel was made aware that a railway crossing on the St. Hyacinthe Subdivision had defective signals. In accordance with rules 133, 134 and 140 of the CROR it was then incumbent upon the grievor to advise all train crews, in writing, that they must stop and physically protect the crossing in question.

This the grievor failed to do. It is not disputed that he advised the crews only verbally, and did not require them to write and repeat back the train order concerning the defective railway crossing.

The grievor's failure had immediate negative consequences. The signal worker who reported the deficient crossing was apparently working at that location when, at 12:15 hours train 306 operated through the crossing at regular road speed. It appears that only after that did the grievor issue TGBO 2138 recording the defective signal into the system. Nevertheless, he again communicated the defect to the crew of VIA passenger train no. 22 by verbal advice only, at 12:43. It further appears that Mr. Nantel also failed to properly verify the train location of train 306 upon its arrival at St. Bruno, as required by article 121 of the rules of the CN Rail Traffic Controllers' Manual. The Company assessed thirty demerits against the grievor for his failure to make proper communication of the defective railway crossing signal on the St. Hyacinthe Subdivision, and a further twenty demerits for his violation of rule 121 of the RTC manual for his failure to properly record the location of train 306. That resulted in the accumulation of 105 demerits, and Mr. Nantel's discharge.

The Brotherhood adduced evidence to the effect that it was not unusual for rail traffic controllers in Montreal to use only verbal communication with train crews in matters such as the defective rail crossing on the St. Hyacinthe Subdivision. It points to the fact that not long after the incident involving the grievor the Company issued a memorandum reminding all rail traffic controllers of the proper procedure to follow. The Brotherhood suggests that in fact there was a degree of acquiescence on the part of the Company in lax practices which should mitigate against any discipline of the grievor for the crossing incident.

The Arbitrator had some difficulty with that submission. Even allowing for the fact that there may have been some questionable practices among RTCs generally at Montreal, there is no suggestion in the submissions to the Arbitrator that the grievor was not trained in the rules, or that there were any exigencies of time which, it appears, might occasionally allow a rail traffic controller to use only verbal communication, where the transcribing and repeating of an order might simply not be practicable. That is plainly not what transpired in the case at hand, and I satisfied that the grievor knew, or reasonably should have known that a higher degree of care was demanded of him with respect to protecting the defective railway crossing in question. There is, moreover, no suggestion on the part of the Brotherhood that the grievor's failure to properly record the location of train 306 was consistent with any practice in the Montreal office.

As should be apparent from the foregoing, Mr. Nantel has recorded an unenviable record with respect to rules violations. Some of the incidents which have resulted from his infractions created situations of possible or imminent danger. Regrettably, the course of corrective discipline which has been followed by the Company appears not to have had the desired impact on Mr. Nantel, whose inadvertence and laxity with respect to the rules appears to have continued unchecked. On the whole the Arbitrator is satisfied that it would not be appropriate to substitute a lesser penalty than the total of fifty demerits assessed against Mr. Nantel for the incidents of June 20, 1998. Like running trades employees, rail traffic controllers are at the heart of safe railway operations, and in many respects are the eyes and ears of the system. They must, as a result, be held to a commensurate high level of responsibility if the movement of trains is to be managed in a safe and productive manner. Regrettably, the grievor's repeated infractions have taken him outside the acceptable range of performance in that regard.

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

December 17, 1999

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