

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3165

Heard in Calgary, Wednesday, November 15, 2000

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (UNITED TRANSPORTATION UNION)

DISPUTE:

The discipline assessed Conductor J.B. Wachter of Lethbridge, Alberta, and his subsequent discharge account an accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

On May 5, 1998, Conductor Wachter's record was debited with forty (40) demerit marks for permitting the movement of equipment with hand brakes applied, for failing to properly secure a cut of cars being left on the main track, and for failing to ensure the effectiveness of handbrakes was tested on cars being left unattended on the main track, resulting in cars being left unattended on the main track with insufficient handbrakes applied, the uncontrolled movement of four loaded cars, side collision and damage to Company equipment and loss of customer's lading; a violation of CROR Rule 112, General Operating Instruction Section 15, Items 28.1(i) and April Monthly Operating Bulletin Instruction, CPR Hand Brake Policy, at Warner, Alberta, April 17., 1998.

Conductor Wachter was subsequently discharged on account of an accumulation of demerit marks.

The Council submits that the discipline assessed Conductor Wachter was too severe in the circumstances. The Council submits that the ultimate discipline assessed (discharge) Conductor Wachter was also too severe in these circumstances. The Council requested his reinstatement with no loss of seniority.

The Council submits that Conductor Wachter gave a forthright and honest account of the events leading up to the incident and that his open and honest account was consistent with his positive attitude and personal attributes he brought to the Company as an employee for approximately ten (10) years. The Council submits that Conductor Wachter has learned his lesson in these circumstances and could return to the service of the Company as a valuable employee.

The Company has declined the Council's request to reinstate Mr. Wachter. The Company's position is that the discipline assessed was warranted, justified and reasonable and that given Mr. Wachter's past work history and service with the Company, no mitigation of the discipline assessed is warranted.

FOR THE COUNCIL:
(SGD.) D. H. FINNISON
FOR: GENERAL CHAIRPERSON

FOR THE COMPANY:
(SGD.) C. M. GRAHAM
FOR: GENERAL MANAGER, FIELD OPERATIONS

Appearing on behalf of the Company:

C. M. Graham	– Labour Relations Officer, Calgary
J. Copping	– Manager, Labour Relations, Calgary
C. Lencucha	– Operations Coordinator, Lethbridge
G. S. Seeney	– Manager, Labour Relations, Calgary
G. Wilson	– Legal Counsel, Calgary

Appearing on behalf of the Council:

M. A. Church	– Legal Counsel, Toronto
L. O. Schillaci	– General Chairperson, Calgary
D. H. Finnson	– Vice-General Chairperson, Calgary
G. R. Crawford	– Local Chairperson, Lethbridge
R. Van Pelt	– Vice-Local Chairperson, Lethbridge

AWARD OF THE ARBITRATOR

It is common ground that on April 17, 1998 Conductor Wachter was responsible for a number of switching moves in the operation of the Coutts subdivision grain lifter at Warner, Alberta. As part of the switching exercise, the grievor and his crew placed four loaded grain cars on the main track. They then proceeded elsewhere to perform other work on the elevator track. As they were working at that location the four cars on the main track rolled free, and collided into the side of their movement, resulting in some \$10,000 in equipment damage. Fortunately no personal injuries resulted. It is not disputed that the incident was caused by the failure of the grievor to properly apply hand brakes, and do a proper hand brake test, in the securing of the four cars left on the main track.

Mr. Wachter is not a long service employee, having been first employed by the Company in February of 1988. At the time of the incident in question his disciplinary record stood at fifty-five demerits. Significantly, his prior record included a number of rules violations, one of which, involving a run-through switch in violation of CROR rule 106, placed him in a dismissable position as a result of which he was offered an option of deferred discipline. He nevertheless incurred a further caution, in January of 1998 for a switching error which resulted in a derailment.

On the whole, in light of the grievor's extensive prior record, the Arbitrator can see little in the way of substantiated mitigating factors which would justify interfering with the decision of the Company to terminate the grievor's services following the collision at Warner on April 17, 1998. This is case which manifestly discloses methodical adherence to principles of progressive discipline by the employer, without apparent effect. There is little reason to believe that any further "second chances" are justified.

For these reasons the grievance must be dismissed.

November 20, 2000

(signed) MICHEL G. PICHER
ARBITRATOR