

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3183

Heard in Montreal, Tuesday 13 February 2001

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

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

### **DISPUTE:**

Termination of Conductor David Carrothers for accumulation of demerit marks.

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

On September 15, 2000 Mr. Carrothers was advised by the Company that his employment was being terminated for "accumulation in excess of 60 demerits".

The dismissal of Mr. Carrothers was a result of an assessment of 85 demerits involving three (3) separate incidents as follows: (1.) Assessment of 30 demerits for exceeding Time Table and G.O.I. speed on September 25, 1999 while employed as a member of the operating crew of Train E260-331-25 – light engine. (2.) Assessment of 15 demerits for failure to comply with CROR 110 on July 28, 2000 while employed as a member of the operating crew of Train M38261-26. (3.) Assessment of 40 demerits for failure to comply with CROR 104(c) and (d) on August 12, 2000 while employed as the conductor on Train M39661-11.

The Union filed separate grievances for each disciplinary assessment alleging that the discipline was unwarranted and excessive. The Union requested, in each separate case, that the discipline be removed or, in the alternative, be reduced.

The Company in all cases declined the Union's request.

### **FOR THE COUNCIL:**

**(SGD.) R. A. BEATTY**  
**GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(SGD.) F. O'NEILL**  
**FOR: SENIOR VICE-PRESIDENT – EASTERN CANADA**

There appeared on behalf of the Company:

F. O'Neill – Labour Relations Associate, Toronto  
T. Brown – General Supervisor, Transportation

And on behalf of the Council:

R. A. Beatty – General Chairman, Sault Ste. Marie  
G. Anderson – Vice-General Chairman, London  
J. Lepki – Local Chairman, Toronto  
A. Weir – Local Chairman, Sarnia  
P. Vickers – Vice-General Chairman, BLE, Sarnia  
D. Carrothers – Grievor

**AWARD OF THE ARBITRATOR**

Having regard to the submissions of both parties the Arbitrator is satisfied that the assessment of thirty demerits against the grievor for the overspeed of his train on September 25, 1999 must stand. The evidence, however, does not sustain the assessment of fifteen demerits for the alleged violation of CROR Rule 110 on July 28, 2000 and the Arbitrator directs that the demerits in question be removed from the grievor's record.

While the assessment of forty demerits for the grievor's failure of compliance with CROR Rule 104(c) and (d) on August 12, 2000 is arguably within the range of possible discipline, I am satisfied that a substitution of penalty in respect of that incident is also appropriate. The Arbitrator therefore directs that a sixty day suspension be substituted for the assessment of forty demerits. The grievor shall therefore be reinstated into his employment forthwith, with compensation for all wages and benefits lost, subject to the assessment of a sixty day suspension, with his disciplinary record to stand in accordance with the terms of this award.

February 19, 2001

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