

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3237

Heard in Montreal, Thursday, 10 January 2002

concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

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

#### EX PARTE

#### **DISPUTE:**

The assessment of 15 demerits to Rick F. Brandon of Vancouver, British Columbia for violation of CROR Rule 115(a) and CROR Rule 112.2.

#### **COUNCIL'S STATEMENT OF ISSUE:**

Rick Brandon was working as a yard conductor engaged in spotting rail cars at the Dow Chemical facility on October 19, 1996.

After giving the locomotive engineer the instruction to proceed forward twelve cars to a joint, Mr. Brandon's radio was switched to a different channel, preventing further communication with the engineer. Consequently, the movement coupled with cars in the track and shoved them over the end of the track.

The Union contends that had the locomotive engineer stopped the movement after proceeding half the distance instructed by the last communication, as required by the Canadian Railway Operating Rules, this incident never would have occurred. As there is shared responsibility, the discipline assessed to the engineer and Mr. Brandon should be coincident. However, Mr. Brandon received 15 demerits while the engineer was assessed a written reprimand. Accordingly, the Union requests that the discipline assessed Mr. Brandon be mitigated to a lesser degree.

The Company disagrees.

#### **FOR THE COUNCIL:**

**(SGD.) R. HACKL**

**FOR: GENERAL CHAIRPERSON**

There appeared on behalf of the Company:

R. Reny – Human Resources Associate, Vancouver  
D. Erickson – Assistant Manger, CMC, Edmonton

And on behalf of the Council:

R. Hackl – Vice-General Chairperson, Edmonton  
B. R. Boechler – Vice-General Chairperson, Edmonton  
B. J. Henry – General Chairperson, Edmonton

### **AWARD OF THE ARBITRATOR**

The principal thrust of the Council's grievance is that the locomotive engineer should have been assessed a greater degree of discipline for the incident which occurred. It does not appear disputed that while the grievor's movement was being pushed forward, with himself on the leading car, he lost radio contact with his locomotive engineer, Ray Oxley, apparently because they were on different radio channels. In the result, as the grievor called out car distances remaining before the stopping point his engineer heard nothing, and the movement coupled onto stationary cars, shoving them out of their track, over an embankment and into an adjacent roadway, damaging a parked truck.

There can be little doubt that the grievor failed in his obligation during the course of the movement. He should have received radio repeats of his instructions from the locomotive engineer as the movement proceeded. In fact, when none were provided he took no alternative action, such as leaving the lead car to communicate by way of a hand signal or attempting to change radio channels to regain communication. In the Arbitrator's view he was plainly deserving of discipline in the circumstances.

The record indicates that the Company accepted the initial explanation of Locomotive Engineer Oxley, to the effect that he did comply with the requirement to initiate a stop within half the distance of his movement when he ceased to have communication with Conductor Brandon. In fact a subsequent review of the distances involved suggests that the locomotive engineer's explanation is questionable, and that the Company may have erred in limiting the discipline of Locomotive Engineer Oxley to a written reprimand following his investigation. The Council submits that in the circumstances the grievor's discipline should not be greater than the locomotive engineer's.

The Arbitrator has some difficulty with the position of the Council. While it is true that as a general rule like conduct should attract like discipline, the position of the Council in the instant case goes further. It would suggest that an error in the discipline of one employee should attract a like error in the discipline of another. No such principle can apply in the responsible administration of discipline under an enlightened labour relations system. The fact that, by misrepresentation or otherwise, one employee may have succeeded in avoiding the same degree of discipline as another, cannot be utilized by the second employee as a basis to mitigate the discipline which properly attaches to his or her own responsibility.

In the instant case I am satisfied that the assessment of fifteen demerits against Conductor Brandon was appropriate in all of the circumstances, and that the grievance must be dismissed.

January 16, 2002

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