

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3250

Heard in Calgary, Tuesday, May 14, 2002

concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

#### **DISPUTE:**

Appeal the assessment of suspension/permanent demotion and permanent restriction from any and all positions which require the taking of track protection.

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

By way of Form 780 dated August 29, 2000, the grievor, Mr. L. Cartier, was assessed discipline in the form of a suspension and a permanent demotion/restriction from any position which requires the taking of track protection, for his alleged violation of rule 49, and his failure to report same. The matter was grieved.

The Union contends that: (1.) The Company's assessment of discipline is unjust and unwarranted. Mr. Cartier has little or no discipline on file for rule violation pertaining to track protection, nor has he been involved in an accident similar or like this in the past. (2.) The Company is assessing such stringent discipline in this instance because of past incidents wherein Mr. Cartier's performance and his ability to accept instructions from others in authority was an issue. (3.) The Company has failed to take into account that some of Mr. Cartier's performance is a direct result of his medical condition. (4.) The Company has failed to accommodate Mr. Cartier or allow him to return to areas of employment where Mr. Cartier in the past showed no sign of problems with rules or authority. (5.) The Company has pyramided discipline against Mr. Cartier for this incident; i.e., suspension, demotion, restriction from holding any position that is required to take protection. (6.) Mr. Cartier took all reasonable steps to ensure the safety of his men and equipment on June 30, 2000, by calling the dispatcher, by calling a foreman who worked in the area and by conferring with his crew. (7.) The area in question is poorly marked and there is no schematics in the timetable.

The Union requests that the grievor be reinstated as an Extra Gang Foreman immediately and that the grievor be compensated for all lost wages and benefits, and that the restrictions placed on him pertaining to taking of protection be removed from his file.

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

**FOR THE BROTHERHOOD:**

**(SGD.) R. F. LIBERTY**  
SYSTEM FEDERATION GENERAL CHAIRMAN

**FOR THE COMPANY:**

**(SGD.) S. M. MICHAUD**  
FOR: VICE-PRESIDENT, PACIFIC REGION

There appeared on behalf of the Company:

- K. Morris – Manager, Human Resources,
- S. Blackmore – Manager, Human Resources, Edmonton

And on behalf of the Brotherhood:

- P. Davidson – Legal Counsel, Ottawa
- R. F. Liberty – System Federation General Chairman, Winnipeg
- D. Brown – Sr. Legal Counsel, Ottawa
- J. Dutra – Federation General Chairman
- S. Crawford – General Chairman,
- L. Cartier – Grievor

### **AWARD OF THE ARBITRATOR**

On a review of the evidence the Arbitrator is satisfied that the Company was justified in demoting the grievor from a position which could involve his holding a track occupancy permit. The evidence confirms that the grievor suffers from clinical depression, for which he has been under treatment for a number of years, and which requires the taking of ongoing medication.

The demotion of Mr. Cartier was implemented following a serious incident in which he placed a work crew of eleven employees onto a main track, without proper authority, when they were assigned to be on a track adjacent to the main line. Fortunately the error was discovered after the machines in question had travelled some seven-tenths of a mile. They were able to return to a crossing and remove their equipment from the main line without accident or incident. Needless to say, however, the consequences could well have been substantially different. In the Arbitrator's view, however, the extent of the demotion imposed upon Mr. Cartier is excessive, given the options available to the Company. He was reduced to performing work at the lowest rate of the machine operators' classifications, as a result of which he suffered layoffs by reason of his relatively low seniority. It is common ground that the grievor does have a higher rate of seniority in the classification of Machine Operator Group 1.

In the circumstances it appears to the Arbitrator appropriate to order an adjustment consistent with making a reasonable accommodation of the grievor's condition. In the Arbitrator's view it is equitable, and consistent with the Company's legitimate interests, if the grievor is allowed to perform work in the higher category of a Machine Operator in Group 1, so long as he does not operate equipment in any circumstance where he is required to hold a track occupancy permit. That would allow Mr. Cartier to work, for example, as the operator of machinery that is within the inside of a sequence of machines, but not at either end where track occupancy status might be important.

The grievance is therefore allowed, in part. The Arbitrator remits this matter to the parties for further discussion consistent with the above, to implement an adjustment in the grievor's demotion to allow him to perform work in the category of Machine Operator Group 1, so long as he does not undertake any assignment which requires him to hold a track occupancy permit. The grievor shall also be subject to maintaining ongoing treatment and periodic assessment of his condition of depression with his own physician, with appropriate reports to be provided to the Company on a quarterly basis, or with such other frequency as may be agreed between the parties. The grievor's return to Machine Operator Group 1 classification shall also be conditioned upon his undertaking to follow any course of medication prescribed to him by his physician. The failure of Mr. Cartier to honour these conditions shall make him liable to further discipline. Should the parties be unable to agree on any aspect of the implementation of this award the matter may be spoken to.

The Arbitrator accepts the submission of the Brotherhood that in the circumstances suspending the grievor was excessive, and further directs that he be compensated for the time he was held out of service.

May 21, 2002

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