

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3271

Heard in Montreal, Thursday, 13 June 2002

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (UNITED TRANSPORTATION UNION)

EX PARTE

DISPUTE:

The discharge of G.A. King of Edmonton, Alberta for violation of CROR rules 146(a)(ii), 101.2, 85.1(a)(b) and Special Instructions 85/1 and 88.

EX PARTE STATEMENT OF ISSUE:

On September 24, 2001, Glen King was working as conductor on train L850 51 24 operating in turnaround service between Walker Yard in Edmonton and Lavoy, Alberta.

Conductor King and crew picked up five tracks at Lavoy after operating light engines from Walker Yard. These five tracks, according to the lists provided by the Company, when assembled would form a train 5,625 feet in length, including the locomotive consist.

Conductor King was instructed to secure his train at Chipman, a 6,595 foot siding, and to take rest at Vermillion. The train was pulled in to the siding 5,934 feet and secured clear of a crossing in the siding. The rail traffic controller was notified that the train was clear of the main line and that the train was secured in the siding. The crew was then transported to Vermillion for their rest.

It was later discovered that there were seven extra cars, not listed on the documentation provided to Mr. King and that their train length was actually 6,284 feet. The train was not, in fact, clear of the main line at Chipman.

Following an investigation Mr. King was discharged.

The Union contends that discharge is unwarranted and, in any event, excessive and the discipline assessed to Mr. King should be mitigated to a lesser degree.

The Company disagrees.

FOR THE COUNCIL:

(SGD.) B. R. BOECHLER
for: **GENERAL CHAIRPERSON**

There appeared on behalf of the Company:

S. Blackmore	– Manager, Human Resources, Edmonton
B. Kalin	– Superintendent Operations, Edmonton
A. Giroux	– Counsel, Montreal

And on behalf of the Council:

M. Church – Counsel, Toronto
B. R. Boechler – Vice-General Chairperson, Edmonton
G. A. King – Grievor

AWARD OF THE ARBITRATOR

The material discloses that the grievor did commit an error in failing to properly count the cars which he switched out of a grain elevator at Lavoy, Alberta on September 24, 2001. In the result, when his train was placed in the siding at Chipman, unbeknownst to Mr. King and his crew, some four cars protruded beyond the east switch, thereby fouling the main line. Fortunately any immediate danger was substantially diminished by a standing order for all movements in the area to be prepared to stop at that location, by reason of the position of the east switch at Chipman. In fact the fouling of the main line was discovered by another train movement operating at reduced speed in accordance with the standing directive.

The Council does not dispute that there was an error committed by Conductor King. Its counsel relates that in the process of doubling cars out of the multiple tracks at the grain elevator he lost track of the count and made the assumption that all of the cars were those that he was to collect, and therefore relied upon the list given to him by the Company to conclude that he had ninety-three cars, when in fact his train totalled 104 cars. The Company took the view that the grievor's prior record, and his error of judgement during the incident in question, justified his outright dismissal.

On close examination of the facts, while the Arbitrator can appreciate the employer's concern, I am not persuaded that the facts, considered in respect of Mr. King's record, do justify the termination of his career of some twenty-five years. While it is true that he was involved in rules violations on prior occasions, he did maintain discipline free service for some eight years prior to this event, save the incident in which he was involved, as related in **CROA 3270**. That incident, assessed by the employer in relation to his piloting of a Loram rail grinder, at forty demerits for a rule 429 infraction, was reduced by the Arbitrator to twenty demerits because of a number of mitigating factors. When the grievor's record is viewed over the longer term, with due regard to the length of his service, the Arbitrator is persuaded that it is appropriate to reinstate Mr. King subject to a lengthy suspension, and a demotion to yard service, at the option of the Company, for a period of not more than two years.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for benefits and without loss of seniority. For the period of two years from the date of his reinstatement the Company may, at its option, restrict him to yard service.

June 14, 2002

(signed) MICHEL G. PICHER
ARBITRATOR