

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 35

Heard at Montreal, Monday, April 18th, 1966

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (PACIFIC REGION)

and

THE BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Discipline case of Yardmen C. H. Dermott, Calgary, whose record was debited with 10 demerit marks for "Failure to promptly advise Engineman of opposing yard movement, when his view restricted, Alyth, April 13, 1965."

JOINT STATEMENT OF ISSUE:

Yardman Dermott was involved in a collision of yard engine 6578 and 8685 on Track P-1-A, Alyth Yard, Calgary, on April 13, 1965. He made his statement at the investigation on April 15th and was held out of service until April 20th.

The Brotherhood of railroad Trainmen contends this discipline was not justified by the evidence produced at the investigation in accordance with Clause (d) Article 13 of the Yard Schedule and requests removal of the discipline and payment for time lost by Yardman Dermott on April 14 - 15 - 16 - 19, 1965, as provided in Clause (e) Article 13.

FOR THE EMPLOYEES:

(Sgd.) S. McDONALD  
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) A. M. FRASER  
GENERAL MANAGER  
(PACIFIC REGION)

There appeared on behalf of the Company:

J. G. Benedetti	Supervisor Personnel & Lab. Rel's., C.P.R. Vancouver
H. G. McGinn	Asst. to Manager Labour Relations, C.P.R. Montreal
C. F. Parkinson	Labour Relations Assistant, C.P.R. Montreal
W. R. McCracken	Superintendent, C.P.R. Vancouver

And on behalf of the Brotherhood:

S. McDonald	General Chairman, B.R.T., Calgary
H. J. Douglas	Local Chairman, B.R.T., Victoria

#### AWARD OF THE ARBITRATOR

Yardman C. H. Dermott was riding in Engine 8685 as it proceeded eastward, pulling 8 cars of steel plate, 1 load and 9 empty cars. The movement was on Track P-1-A which is between and parallel to the main track on its south side and what are known as the Ogden Lead and Tank Tracks on the north side. Approaching a curve he and the fireman were on the left side of the engine maintaining a look out on the inside of the curve where a high bank extends as far as an overhead bridge they were approaching. When about 6 poles from that bridge, Yardman Dermott claimed he could see half way round the curve but not east of the bridge. At that point he saw an engine come under the bridge. He hesitated to shout a warning, because for the moment he was not sure that the approaching train was on the same track. Once this was determined, he shouted a warning to the engineer, who immediately applied his brakes in emergency. The engine then proceeded approximately one or two car lengths when the impact occurred. He stated during the investigation that was held at that time his forward movement was less than one mile per hour.

The investigation of the crew of Engine 6578 resulted in their estimate of their speed approximately 7 miles per hour being checked. Tests that were held placed their speed closer to 12 miles an hour. This was in violation of Rule 105 of the Uniform Code of Operating Rules, requiring trains using other than a main track to proceed at restricted speed. This is placed at a speed permitting stopping within one-half the range of vision.

Yardman Dermott was disciplined by assessment of 10 demerit marks for "Failure to properly observe track ahead, when visibility of Engineman restricted."

An important factor in this decision was the answer made by this employee during the investigation to the question "Do you feel that if you had warned engineman immediately that you observed opposing yard movement that this mishap could have been avoided?" His answer was: "There is a possibility that this would have avoided the mishap."

In his presentation Mr. McDonald claimed this was a quite improper question; that at that time there were too many undetermined factors to have permitted the Yardmen to intelligently reach that conclusion. One of the most important was the unreliable evidence of the crew of the other engine as to their speed. This raised the question whether, if Engine 8685 had been stopped, the impact could have been avoided.

Mr. McDonald stressed Article 13, Clause (d) of the Yard Rules providing:

"An employee will not be disciplined or dismissed until after investigation has been held and until the employee's responsibility is established by assessing the evidence produced and no employee will be required to assume this

responsibility in his statement or statements."

In dealing with the excuse offered by the Yardman for his hesitation in calling a signal to the Engineer, Mr. Benedetti submitted that railway operating employees who have written and passed the Uniform Code of Operating Rules are well aware of their obligation to adopt the safe course in cases of uncertainty and it was for such a failure that Yardman Dermott was disciplined. The rule referred is 108 reading:

"In case of doubt or uncertainty the safe course must be taken."

While Mr. Benedetti agreed that the excessive speed of engine 6578 was the "major contributing factor" to the collision, he contended the failure of the crew on that engine did not in any way absolve Yardman Dermott from not taking the proper course of action.

After a study of all submissions in this matter I am convinced the explanation offered by Yardman Dermott was not properly assessed; nor were there broad terms of Rule 108 placed in proper perspective to a situation requiring an instantaneous decision.

While Rule 108 has the appearance of covering almost any situation, I doubt on review it will be found applicable to other than where the person involved has a reasonable opportunity to weigh the circumstances and then decides in favor of other than the obvious safe course.

There was no evidence submitted that Yardman Dermott was not keeping a proper lookout. While under a general requirement to at all times guard the property of the Company, there would appear to be a greater responsibility upon the fireman to notify the engineer of the impending collision. He did not do so before Dermott. The same penalty was imposed upon him.

Consider the situation facing Yardman Dermott: They were on a curve that obstructed a full view ahead. Suddenly an engine appears, admittedly at a distance that required assessment for danger. There was a doubt in Dermott's mind, because of the number of tracks ahead that the approaching engine was actually on Track P-1-A. Surely he had a responsibility and a right to make that determination. This was done almost instantly and then the warning given.

I have no doubt the answer made by Yardman Dermott during the course of the investigation was relied upon in finding him culpable. I am in complete agreement with Mr. McDonald's submission that had this employee been properly represented during the investigation he would have been advised not to answer that question.

For these reasons I find the demerit marks assessed against this employee should be expunged from his work record, as well as any reference of a derogatory nature concerning this incident.

I also find he should be paid for the time lost on April 14, 15, 16, 19, 1965.

J. A. HANRAHAN  
ARBITRATOR