

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 48

Heard at Montreal, Monday, November 14th, 1966

Concerning

CANADIAN NATIONAL RAILWAY COMPANY (ATLANTIC REGION)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Six months suspension assessed Engineer A. Michaud for violation of Rules 34, 264, 285 and 292 of the Uniform Code of Operating Rules June 9, 1965.

JOINT STATEMENT OF ISSUE:

On June 9, 1965 Mr. A. Michaud was the locomotive engineer on Train No. 412, an Eastward freight movement on the Monk Subdivision between Edmundston and Diamond, N.B. Engineer A. Michaud was charged with violation of the Uniform Code of Operating Rules during the movement and following an investigation of the incident he was assessed discipline of 6 months suspension. The Brotherhood of Locomotive Engineers appealed the discipline assessed. The Company has refused to remove the discipline.

FOR THE EMPLOYEES:

(Sgd.) D. E. McAVOY
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) E. K. HOUSE
ASST. VICE-PRESIDENT
LABOUR RELATIONS

There appeared on behalf of the Company:

M. A. Cocquyt,	Labour Relations Assistant, C.N.R. Montreal
D. C. Fraleigh,	Senior Agreements Analyst, C.N.R., Montreal
R. C. Field,	System Rules Supervisor, C.N.R. Montreal
H. R. Beck,	Rly. Telecommunications Project Engineer, C.N.R., Montreal
D. H. Green,	System Engineer of Signals, C. N. R., Montreal
M. S. Drummond,	Signal Supervisor Technical Training, C.N.R., Montreal
S. J. Mayer,	Operations Officer, C. N. R., Montreal
G. W. Vogen,	Asst. to Engineer of Signals, C. N. R., Montreal
D. A. Murray,	Signal Supervisor, C. N. R., Edmundston, N.B.
O. P. Harquail,	Area Rules Instructor, Campbellton, N.B., C.N.R.
J. E. Shaw,	Chief Train Dispatcher, C.N.R., Edmundston, N.B.

And on behalf of the Brotherhood:

D. E. McAvoy,	General Chairman, B. L. E., Montreal
W. J. Wright,	Assistant Grand Chief Engineer, B.L.E., Montreal

AWARD OF THE ARBITRATOR

The representative for the Brotherhood presented statements taken by the Company from the following numbers of the crew of train No. 442 on June 11 and 24, 1965:

A. Michaud	Locomotive Engineer
L. G. Millard	Conductor
J. R. Nadeau	Head-end Brakeman
J. L. Lavoie	Rear-end Brakeman

Also presented were statements taken from the Train Dispatcher, E. A. Garrett, concerned in the movement of trains in the area in question, as well as a statement from R. J. Bellavance, conductor on a work-train, and one from J. A. Dagneault, Fireman-Helper.

In each case the first statement form was headed, "An investigation in regard to an apparent violation of Rule 517. This heading did not appear in the subsequent statements.

Conductor Milliard said in his statement that on the occasion in question Engineer Michaud spoke to him over the radio telephone and informed him that the approach signal involved showed a clear indication. Engineer Michaud said he called the signals to the other members of the crew in the cab of the engine for both the approach and the governing signals at Estcourt; that in each case the signal was clear. He stated the members of the crew in the cab in each case acknowledged the signals. Trainman Nadeau and Fireman-Helper Dagneault confirmed this in their statements, testifying that the signals in question were green.

The representative for the Brotherhood asked the Arbitrator to note the uncertainty displayed by the Train Dispatcher when questioned; that he even admitted in a telephone conversation with Trainman Nadeau at the time that it was possible the C. T. C. plant was not functioning properly.

That portion of the Train Dispatcher's statement contains this statement:

"I think it was Brakeman Nadeau came on the phone and made a statement that the approach light into Estcourt and the home signal at Estcourt both indicated proceed. I told him that as far as I knew the signal was supposed to be at 'Stop'. He maintained that they were indicating a proceed indication I did not wish to further progress the argument on the phone, so I replied noncommittally, 'Ca se peut' which means in English translation 'It could be'. I did not want to get into an argument on the phone as the situation was too serious to commit myself or anyone else."

The representative for the Brotherhood also took exception to the fact that second statements were taken from those involved; further, that although the original statement forms were headed "an apparent breach of Rule 517", the final penalty was assessed against the engineer for breaches of Rules 34, 264, 285 and 292 of the operating rules.

There was also a complaint that although he had requested copies of statements taken from "all witnesses" he had not received a copy of a report made by Signal Maintainer.

Exception was also taken to the fact that a pen graph introduced in evidence at this hearing was first produced to the Brotherhood officials ten months after the incident occurred. A copy of this document had never been sent to the General Chairman. This failure was considered to be in violation of Article 33, Clause "A", Section(6) of the collective agreement.

The original investigation having commenced on the basis of a violation of Rule 517 and being finalized, after the engineer had been recalled for a second statement, was considered to be in violation of Article 33-A-Section (1) and (2), reading:

- (1) "When an investigation is to be held the Engineer whose presence is desired will be properly advised as to the time, place and subject matter, which will be confined to the particular matter under investigation."
- (2) "An Engineer will not be disciplined or dismissed without having had a fair and impartial hearing and his responsibility established."

Rule 517 of the Uniform Code of Operating Rules reads:

"If any part of a train or engine overruns a signal indicating STOP, front of train or engine must be protected immediately as prescribed by Rule 99 for OUTSIDE ABS TERRITORY, and member of crew must immediately communicate with train dispatcher and be governed by his instructions."

The representative for the Company, in answering these objections, drew attention to the word "apparent" in the heading on the form on which the statements were taken - "investigation of an apparent violation of 517". This indicated, he urged, that at that point of the investigation no conclusion had been reached as to what violation, if any, had actually occurred. This was the purpose of the investigation.

Rule 34 reads:

"Crews on engines and snow plow foremen must know the indication of fixed signals (including switches where practicable) and members of train crews must know the indication of train order signals affecting their train before passing them. All members of engine and train crews must, when practicable, communicate

to each other by its name the indication of each signal affecting the movement of their train or engine."

In my opinion, the grievor being fully aware of the general nature of the complaint namely, that he had run his train through a caution and a stop signal, the difference in content between these two rules would not represent any disadvantage to him making a full explanation as he volunteered to do in making his two statements.

As to the request for the statement said to have been made by the signal maintainer, the representative for the Company explained that no statement was taken from that employee under Article 33 "A" (6) of the collective agreement. The information given by this Officer to the Company was by way of a report. He was not "part of the official investigation carried out under the authority of the Article described. Therefore, that portion of Section (6) reading "The General Chairman to be given a copy of statements of such witnesses on request" would have no application. It is to be noted the original request by the General Chairman was for "statements of all witnesses".

With respect to the pen graph that at this hearing played such an important part in the Company's presentation, the representative for the Company told that it was displayed to the General Chairman at the first Joint Conference and that an expert was called in at that meeting to explain its significance.

For these reasons I can find no substance in the objections taken that would of themselves invalidate the action taken by the Company.

From the Company's presentation the Arbitrator was given a picture in depth of the movement of trains at the time this incident occurred and particularly of the signal system installed and operating in this area. With respect to the latter, a highly qualified expert, the engineer in charge of the signalling system on this railroad, Mr. D. H. Green, explained in great detail the manner in which the signal system operates. He traced, with the aid of a copy of the pen graph made at the time, the particular movements of the trains involved.

CTC is defined in the Uniform Code of Operating Rules as:

"A system in AIS (Automatic Block Signal System) territory under which train or engine movements are authorized by block signals whose indications supersede the superiority of trains for both opposing and following movements on the same track."

Trains obey the signal indications which are under the supervisory control of a dispatcher from a control machine. On the morning in question the particular signals involved were regulated by the Train Dispatcher Garrett. Photographs of the dispatchers room, showing the control console in Edmundston were produced. The CTC machine consists of the dispatcher's control console and a separate track diagram. The operating console, positioned to provide a clear view of the track diagram is equipped with pushbuttons to select location and to control switches, signals and other necessary functions. The track diagram gives a visual display of the territory controlled. On the track diagram each controlled location is designated by name and

assigned a number.

The control console contains a panel with independent location selection buttons for each controlled location. To control like functions at all locations, one common set of pushbuttons is provided; signals, switches, traffic direction and other functions.

In setting up a signal pattern the dispatcher pushes a button for the appropriate location; he then selects the desired switch and signal function by operating the appropriate pushbuttons, and then pushes the start button. This initiates a code to transmit controls to the field location selected to operate the switches and signals to the desired positions.

After the switches and signals have responded in accordance with the manner set up by the dispatcher, indications are automatically sent back and displayed on the track diagram to indicate that the switches and signals have completed operation to the desired position.

The CTC machine is equipped with a pen graph to provide a record of events that take place in the field, and to assist the dispatcher in safe and efficient movement of trains. The pen graph records occurrence of the following conditions from the field:

- (a) governing signal - clear or stop
- (b) control location (OS) track - occupied or unoccupied
- (c) governing signal accepted by a train
- (d) cancellation of a controlled signal by the dispatcher

On the morning in question a work train had been tied up in a back track at Estcourt siding on the Monk Subdivision. It was ordered for 6:00 a.m. E.S.T. June 9, 1965, to surface track between Estcourt and Tarte on the Monk subdivision. At 7:08 a.m. Train Dispatcher Garrett gave Conductor Bellavance authority for exclusive occupancy of the main track between Estcourt and Tarte from 7:10 a.m. to 10:00 a.m. Conductor Bellavance copied the authority in writing and repeated same to the train dispatcher at 7:10 a.m. A copy of the order was produced in evidence.

The dispatcher blocked the governing signals at Estcourt west and Tarte east to prevent trains from receiving signals which would permit them to enter the territory between Estcourt and Tarte. The work train crew then commenced work on the mainline between Estcourt and Tarte.

According to his statement, Conductor Bellavance, riding on the leading track motor car was moving westward towards Estcourt spring switch to clear the expiry time of 10.00 a.m. In the vicinity of the west switch at Sully, Conductor Bellavance observed an eastbound train coming towards him on the main track. This train was later identified as No. 442, on which the grievor was the engineer. The work equipment was immediately brought to a stop Train 442 came to a stop approximately twenty car lengths from the work gang.

In his statement the Train Dispatcher told that when he first received a telephone call from Conductor Bellevance he checked to see if the blocking lights were still on and they were. This was verified in the statement by the other dispatcher on duty at the time, Mr. J. Sharber, who told that from the conversation Mr. Garrett had with Brakeman Nadeau he deduced a train had run into the working limit. He said, "By natural instinct, knowing something was amiss in the work limit, I noted that the blocking was on between Estcourt and Tarte." He was asked, "Did Dispatcher Garrett manipulate the buttons on the console when or after having conversation with the two men on the phone? Answer, "No, sir; he did not touch the console at the time of conversation."

Mr. Green explained that to remove blocking that had been applied to the Estcourt-Tarte track section, the dispatcher would have had to push the location selection button at Estcourt and then simultaneously pull both the blocking button and the appropriate signal button. In other words, it would require a deliberate conscious act on the part of the dispatcher to put into effect a cancellation of blocking. It was not a matter of accidentally pushing a button.

It was explained that with the blocking set up to protect the work train during the hours stated, the engineer on train 442 on approaching the signal to Estcourt would have encountered a yellow light. Here Rule 285 would prevail, reading "Proceed, preparing to stop at next signal. Trains exceeding medium speed must at once reduce to that speed. Reduction to medium speed must commence before passing signal." He would then have encountered a stop (red) aspect at the governing signal at Estcourt.

Following Conductor Bellevance's telephone call to Dispatcher Garrett the latter immediately contacted Chief Train Dispatcher J. E. Shaw and Signal Supervisor D. Murray. The latter arrived at the Dispatcher's office within two to three minutes. He noted that the CTC was functioning properly and that the pen graph indicated the authorized movement of certain trains and also the unauthorized movement of Train No. 442 beyond the stop signal at Estcourt West. These findings were confirmed by the Chief Train Dispatcher who arrived immediately after the Signal Supervisor.

On the pen graph Mr. Green traced the westward movement of train No. 405 past the governing signal at Estcourt at 7:04 a.m. This showed a true record of that train's movements through the signals. As indicated, when governing signals are cleared for a train by the dispatcher and when these signals are activated by the train, the facts are recorded by the graph pens.

Mr. Green illustrated on the pen graph that there was no record concerning train movements past the governing signal at Estcourt from the time of the authorized movement of westbound train No. 405 at 7.04 a.m. until the unauthorized passing of train No. 442 at approximately 9.42. Nor did the graph indicate the establishment of any authority for the movement of trains into or out of the protected section between Estcourt and Tarte between 7.08 a.m., when the Dispatcher cleared the dwarf signal at Estcourt to allow gang 610-02 to leave the siding until 10.00 a.m., when the signals at Tarte were

cleared by the Dispatcher for the continued eastward movement of train No. 442.

Mr. Green told the graph clearly indicated the unauthorized movement of train No. 442 past the stop indication at the governing signal at Estcourt at approximately 9.42 a.m. As well, the graph clearly indicated that the first authority for movement beyond the governing eastward signal at Estcourt after the blocking at 7.10 A.M. occurred at 10.20 a.m. when the signal was cleared for train No. 406.

Following the checking described, a number of tests were immediately conducted by the Signal Supervisor on the CTC console and in the field at Estcourt. Simulation of the conditions as they existed was effected and all tests clearly indicated that the CTC was functioning correctly and normally.

It was explained that the Company is answerable to the Board of Transport Commissioners in ensuring that the movement of trains is accomplished in a safe manner. Therefore the tests which are immediately conducted following the incident of the kind here being examined are an essential part of management's responsibilities.

Mr. Green emphasized that the design of the signal circuits prevent the lighting of the westward approach signal, seen by Conductor Bellevance if the eastward governing signal at Estcourt for Train No. 442 had been clear as alleged. This, it was urged, was an additional point in proof of the fact that train No. 442 did not receive a clear signal at Estcourt.

Mr. Green also drew attention to the evidence given by those in the cab of engine of Train No. 442 that, having been cleared to proceed eastward, a red signal was encountered at the eastward approach signal to Tarte. It was claimed that if the eastward signal at Estcourt had been cleared for Train No. 442 this would have given a yellow approach signal to Tarte, not red. When the eastward governing signal at Tarte was cleared by the Dispatch at 10.00 a.m. this would permit the approach signal to go from red to green; that this occurred was reported by the crew.

The representative for the Company maintained that the evidence provided by the pen graph was "spectacular". It indicated, he claimed, in great detail and with remarkable accuracy that no authorization by the dispatcher was in effect at 9.42 a.m. on June 9, 1965, when train No. 442 entered the blocked territory between Estcourt and Tarte.

The presentation for Engineer Michaud did not contemplate any guilt therefore, no plea was made for a reduction in the six months suspension imposed. The Company introduced the past record of the grievor showing from 1941 to the present incident twenty-one recordings of cautions, demerit penalties or suspensions had been made. The representative for the Brotherhood properly asserted that these could not be considered in deciding whether on this occasion his conduct was blameworthy. It would, of course, have entered into consideration had a plea for a reduction in the penalty been made.

On all the evidence I am convinced the unadorned statements by the

engineer and the two others in the cab, (as they admitted, then facing the possibility of discharge) that they did not proceed contrary to the rules and to the signals displayed, must be considered pallid as against the convincing evidence produced for the company, particularly that of the record made by the pen graph. From this evidence I am satisfied that on the morning in question all the signal equipment in question was functioning properly. Therefore, the action taken against Engineer Michaud was with just cause.

This application is therefore dismissed.

J. A. HANRAHAN
ARBITRATOR