

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 89

Heard at Montreal, Monday, November 13th, 1967

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Thirty days' suspension assessed locomotive engineer M. H. Crux for insubordination.

JOINT STATEMENT OF ISSUE:

On August 16, 1966 Mr. M. H. Crux was the locomotive engineer on Transfer M-3 at the Toronto Yard. Engineer M. H. Crux was charged with insubordination in that he refused to comply with instructions given him by a Company officer and by a Yardmaster, pertaining to making an air brake test. Following an investigation of the incident he was assessed discipline of 30 days' suspension. The Brotherhood of Locomotive Engineers appealed the discipline assessed. The Company has refused to remove the discipline.

FOR THE EMPLOYEES:

(Sgd.) E. J. DAVIES  
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) E. K. HOUSE  
ASSISTANT 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	
A. Clement	Senior Agreements Analyst	C.N.R.,
	Montreal	
R. C. Field	System Rules Officer	C.N.R.,
	Montreal	
R. J. Wilson	Labour Relations Officer	C.N.R.,
	Toronto	
B. Buchanan	Trainmaster Road Foreman	C.N.R.,
	Toronto	
G. Carra	Labour Relations Officer	C.N.R.,
	Montreal	

And on behalf of the Brotherhood:

E. J. Davies	General Chairman, B. L. E., Aurora, Ont.
J. B. Adair	1st Vice General Chairman, B.L.E., Windsor, Ont.

#### AWARD OF THE ARBITRATOR

There was no dispute about these basic facts:

On the date in question the carman responsible for inspection of the train on which the grievor was the engineer requested the Inspection Control Center to arrange for him to set up the brakes. Inspection Control then communicated with Yardmaster Dotzko, who in turn communicated with engineer Crux.

According to Engineer Crux, in the original transmission by Mr. Dotzko the latter was not certain whether a set up or release of the train brakes was required. This resulted, the grievor claimed, in confusion in his mind as to the exact instructions.

It was not contradicted that the procedure for conducting a No. 1 air brake test in Toronto has since the opening of the new electronic yard during February, 1965, involved the relaying of signals by radio for a set up of the air brakes from a carman, to an Inspection Control Center, to the appropriate yardmaster and finally to the engineman to apply the train brakes

It was admitted by the Company that if the original signal to Engineer Crux was unclear, as alleged, he acted quite properly at that time in not responding to the signal.

It was established, however, that within a few moments of receiving the first signal, engineer Crux was instructed by Yardmaster to apply the brakes. It was also alleged that at the same time he was advised of the whereabouts of the carman. Engineer Crux refused to set up the brakes on the basis that confusion existed as result of the first signal. He demanded that the carman who had initiated the signal from the rear of the train was required at the engine before the brakes could be set.

It was alleged by the Company that nothing in the regulations or instructions applying to the conducting of air brake tests and nothing in the Uniform Code of Operating Rules contemplates that engineer Crux could demand the presence of the carman at the engine before he would apply the brakes.

It was stated that when engineer Crux refused to set up the brakes in receiving the second signal from Yardmaster Dotzko, the matter was reported to the General Yardmaster who in turn reported it to Trainmaster Road Foreman Buchanan. Mr. Buchanan proceeded to the cab of the engine and asked engineer Crux if he had received instructions to set up the brakes. Mr. Crux replied that he had but that he would not apply the brakes until he had seen the carman.

It was stated that Mr. Buchanan then, in his capacity as a supervisor of the Toronto Yard, instructed engineer Crux to apply the train

brakes. Mr. Crux refused to do so and he was advised he was out of service.

During the investigation that was held engineer Crux was asked:

"Q. After receiving a report from G.Y.M. Trainmaster Buchanan arrived at the engine and asked you personally if you had received instructions to set up the train brakes and you replied yes. Is this correct?

A. Yes."

"Q. It is reported that about 2.35 P M , August 16, 1966, after the train line was charged on transfer M-3 on track L-21 you were instructed by Yardmaster W. Dotzko to set up the brakes for #1 brake test and that you refused to do so until a carman a walked to the engine. It is further reported that you were instructed a second time by Yardmaster Dotzko to set up the train brakes after he had advised you that the carman was at the rear of the train waiting and that you refused a second time to apply the brakes until the carman walked to the front end of the train. Is this report correct?

A. No.

Q. What part of the report is incorrect in your opinion?

A. The Yardmaster did not know whether it was to set the brakes up or to release them, on both occasions."

From this last answer the Company submitted engineer Crux admitted he had been informed by Yardmaster Dotzko, when advised the second time to set up the train brakes "that the carman was at the rear of the train waiting".

For the Brotherhood it was submitted that the procedure outlined by section T-312 - No. 1 Test (Initial Terminal) requires that an employee must be at the rear of the train to fulfil the requirements of sub-section A-B and C of the Rule.

An examination of Section T-312 discloses no statement that a carman must be at the rear of the train before the brakes are set for the test.

The requirement for the test shows that the air brake system in the train must be charged to within 15 lbs. of standard air pressure but to not less than 60 pounds for a freight train. While the air brake system is being charged a carman examines the train from front to rear for leaks. He must also know the angle cocks, cut-out cocks and retaining valve handle are in proper position, that the reservoir drain valves are closed and that the air hose is properly coupled and hand brakes are fully released.

When the carman arrives at the rear of the train and is satisfied that the air brake system has been charged to the required amount by the caboose gauge indication, he initiates a signal to apply the

brakes. The sign can be by hand directly to the engineer, it can be by hand to another carman or other employee who in turn relays it to the engineer; it can be by radio directly to the engineer or by radio to another employee who in turn relays it to the engineer.

Once the train brakes have been applied by the engineer, the carman proceeds from the rear of the train towards the engine examining that brakes have applied on each car and that brake piston travel is correct. When this inspection has been completed, a release signal will be given to the engineer by the carman who will be in the immediate vicinity of the engine. Following the release of brakes, the carman returns along the train towards the rear end and inspects each brake to see that it has properly released. He then communicates with the engineer either directly if there is a portable radio available in the caboose or relays the information through other employees informing the engineman of the number of cars in the train consist, the number of functional brakes and that the No. 1 air brake test is completed.

It was the principal contention of the Brotherhood that a proper signal under the Rule was never received and in fact was never given.

In a booklet issued by the Canadian National Railways, headed Rules for the Operation, Maintenance, Inspection and Testing of Air Brake and Communicating Signal Equipment on Motive Power, Cars, and Work Equipment, it is stated:

"Supervisors, inspectors, enginemen and trainmen are responsible for making the required tests in accordance with these rules."

During the grievor's examination he was asked:

"Q. Do you fully understand that both the Yardmaster and Trainmaster as supervisors of Toronto Yard are responsible to see that brake tests are carried out in accordance with the rules laid down in form 696?

A. They should be."

I am satisfied that whatever doubt existed in the mind of engineer Crux when the original signal was given, this was clarified for him by the instructions he received from Trainmaster Buchanan, a supervisor. There is no doubt in my mind he should have complied with those instructions, and that nothing then existed that would permit him to invoke Rule 108 of the Uniform Code of Operating Rules in situations where doubt or uncertainty prevail.

The Company's presentation included a record of disciplinary action taken against engineer Crux since 1942. While this, of course, could not enter into the decision as to whether or not his conduct on this occasion was blameworthy, it may be considered with respect to the quantum of penalty imposed.

The record showed that until February, 1965, engineer Crux had on twenty-one occasions been assessed demerit marks, he had been reprimanded twice he had been suspended on two occasions, once for 90 days and the second for 15 days. On one occasion he was discharged

but was reinstated two months later

There can be no question under the Rules governing investigation and discipline that an employee subject to such action may be held off duty for that purpose.

I am satisfied that the disciplinary action taken in the circumstances outlined was justified and that the penalty imposed was not unduly severe.

For these reasons this grievance is dismissed.

J. A. HANRAHAN  
ARBITRATOR