CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 180

Heard at Montreal, Tuesday, October 14th, 1969

Concerning

PACIFIC GREAT EASTERN RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Assessment of 15 demerit marks against the record of Trainman G. T. Manvell.

JOINT STATEMENT OF ISSUE:

Under date of March 10th, 1969, Trainman G. T. Manvell was advised by Railway Form 243, No. 2428, that effective February 26th, 1969, his record had been assessed with 15 demerit marks for failure to comply with Rule 104 of the Uniform Code of Operating Rules, Revision of 1962.

The Union has requested removal of this discipline, but the request has been declined by the Railway.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) R. F. LANGFORD	(SGD.) J. A. DEPTFORE
GENERAL CHAIRMAN	REGIONAL MANAGER

There appeared on behalf of the Company:

R. E. Richmond	-	Chief lndustrial Relations Officer, P.G.E. Vancouver
H. Collins	-	Personnel Supervisor, P.G.E. Vancouver
L. F. Beaulieu	-	Terminal Supervisor, P.G.E., Prince George, B.C.

And on behalf of the Brotherhood:

R. F. Langford	-	General Chairman, U.T.U.(T) - Prince George, B.C.
G. T. Manvell	-	(Grievor)

AWARD OF THE ARBITRATOR

Although a number of matters relating to the grievor's employment and

ultimate discharge are dealt with in the union's brief, it is agreed by the parties that the only issue before me is that set out in the joint statement of issue, that is, whether the fifteen demerit marks were properly assessed against the grievor.

The fifteen demerit marks in question were assessed against the grievor effective February 26, 1969, as a result of an incident which occurred on February 23, 1969, for which the grievor was held responsible. The incident was an accident which occurred during the grievor's tour of duty that day in the classification yard at Prince George. The grievor, who has qualified as a conductor, was working as yard foreman, with a crew of two trainmen helpers and an engineer. The assignment, known as a tramp yard assignment, commenced at 13:30 K, and the accident took place at 19:45. There seems to be no doubt as to how the accident occurred. It was intended to move cars into track C-9. The members of the crew, in positions assigned by the grievor, were required to line the necessary switches for this move. The grievor was advised by signals that the move was properly lined, and it proceeded. Unfortunately, the tail-end yardman had lined the wrong switch, and the movement proceeded, at about three miles per hour, into track C-10 rather than C-9. Track C-10 was full, and the cars therein were pushed out at the south end, sideswiping a car on the south end of track C-7, which had been left foul of the lead. It was considered that the grievor was responsible for the accident, and discipline was accordingly assessed against him.

At the time of the accident. the grievor was standing, apparently at the north end of the yard, talking to the Co-Ordinator on duty. This in itself would not appear to be improper. He had assigned his crew to perform the proper switching, and had received signal indications that his assignment had been carried out. I think it cannot properly be said that he was not paying attention to his duties. Neither the grievor nor his crew was responsible for there being a car foul of the lead on the south end of track C-7; that was the work of an earlier crew.

It will be seen that there were two direct causes of the accident. One was the lining of the wrong switch; the other was the leaving of a car foul of the lead on the south end of track C-7. It does not appear that there was any investigation of, or discipline imposed for the latter error. In any event, it was a matter unconnected with the grievor or his crew, and need not be considered further. It may be observed that the Train Yard Co-Ordinator, in his report, described the "unsafe condition" as "lined wrong switch", and the Assistant Terminal Supervisor, in his report, gave as the cause of the accident, "wrong switch thrown".

The wrong switch was thrown by the tail-end yardman, Mr. Chapman. He seems not to have been the subject of investigation, and there appears to have been no discipline imposed upon him. If this is the case, it is surprising, since it would seem clear that Mr. Chapman would not be relieved of his responsibility under Rule 104 of the Uniform Code of Operating Rules. However this may be, it is only the responsibility of the grievor with which I am concerned here.

At his investigation hearing, the grievor stated that Mr. Chapman had not worked the north end of the classification yard very often, and

that he had become confused. Mr. Chapman, however, was an experienced railroad employee, and I cannot conclude merely from this that it was the grievor's duty, in the circumstances, to accompany Chapman to ensure that he performed all his tasks properly. The company's reference to Chapman's "incompetence" would more properly be read as an acknowledgment of its own responsibility than of that of the grievor. In my opinion, it was reasonable for the grievor to rely upon Chapman to carry out his duties (he seems to have understood what he was to do), and to rely as well upon his signal that he had performed them.

In fact, however, the grievor did take some action to satisfy himself that his assignment had been carried out, for he checked the signal indication of the switches. On the last occasion when he had worked in the north end of the classification yard the C-9/C-10 switch had been a standard switch, distinguished from the others by its height. In checking the signal indication, the grievor noticed such a switch lined yellow, and assumed it was that switch, properly lined for C-9. In fact, the C-9/C-10 switch had been changed without notice (although notice of change of switches has been given in the past) to a racor-type switch with a lower mast. The grievor stated that when he discovered this, following the accident, the lamp on the switch was not lit. Having regard to all of the circumstances, I do not think it can be said that grievor failed to carry out his duties in a proper manner. He assigned the work properly, and took reasonable steps to ensure that it was properly carried out.

The company, however, relies on Rule 104 of the Uniform Code of Operating Rules as fixing the responsibility for the incident on the grievor. The first paragraph of Rule 104 is as follows:

> 104. HAND OPERATED SWITCHES - Except where switchtenders are stationed, conductors are responsible for the position of switches manually operated by them and members of their crews. Employees are not relieved of responsibility in properly handling switches.

As I have noted, yardman Chapman would not be relieved of his own responsibility for throwing the wrong switch. As to the grievor, the rule is clear that he was responsible for the position of the switch, being manually operated by a member of his crew. The question is, what is the nature of this responsibility? It would appear, on the company's argument, that it imposes an absolute liability on the conductor in the event of a wrongly-positioned switch, whatever the reason for the error. This sort of liability would be imposed on the conductor even though he himself had committed no fault, but had carried out his duties reasonably and properly. In my view, this is not a proper interpretation of Rule 104. In any event, of course, we are concerned in these proceedings with the imposition of discipline, and it is my opinion that discipline may not properly be imposed on any employee who has carried out his duties reasonably and properly, and committed no fault. In the instant case. the grievor's responsibility was met by issuing proper instructions and taking reasonable steps to insure they were properly carried out.

In the circumstances, it is not necessary for me to deal with the union's argument that Rule 104 does not apply to the grievor, who was

acting as a yard foreman, and not as a "conductor". Whatever may be said as to this argument, it was clearly the grievor's responsibility to see to the proper positioning of the switches throughout his assignment. For the reasons given, it is my view that the grievor did meet this responsibility during the assignment in question. The error was that of Mr. Chapman. and the grievor was not properly disciplined for it.

Accordingly, the grievance is allowed. The assessment of fifteen demerit marks is to be removed from the grievor's record.

J. F. W. WEATHERILL
ARBITRATOR