CANADIAN RAlLWAY OFFlCE OF ARBITRATION

CASE NO.297

Heard at Montreal, Tuesday, September 14th, 1971

Concerning

PACIFIC GREAT EASTERN RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTlVE ENGINEERS

DISPUTE:

Assessment of 15 demerit marks against the record of Engineman R. E. Morgan, effective October 15, 1970 for delaying the placing oi piggyback trailer cars on October 3rd, 1970.

JOINT STATEMENT OF ISSUE:

On October 2, 1970 Engineman R. E. Morgan was the engineman assigned to the 2230 yard assignment at the North Vancouver Terminal of Pacific Great Eastern Railway.

At approximately 0600, October 3, 197O, Engineman Morgan was instructed by the Foreman in charge of the yard crew to place piggyback trailer cars on spot for unloading. Engineman Morgan refused to follow the Yard Foreman's instruction, claiming that because there was a caboose coupled to the trailer cars, he was prohibited, by Company regulations, from performing "unnecessary switching" with a caboose.

As a result, the spotting of the piggyback trailers was delayed and, following an investigation, the record of Engineman Morgan was assessed 15 demerit marks.

The Brotherhood has requested removal of the discipline.

| FOR THE EMPLOYFES: | FOR THE COMPANY: |
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| (SGD.) K. G. MASON | (SGD.) M. C. MORRIS |
| GENERAL CHAIRMAN | REGIONAL MANAGER |

There appeared on behalf of the Company.

R. E. Richmond - Chief Industrial Relations Officer, P.G.E.Rly., Vancouver
H. Collins - Supervisor Labour Relations, P.G.E. Rly., Vancouver

And on behalf of the Brotherhood:

K. G. Mason - General Chairman, B. L. E., Williams Lake, B.C.
R. E. Morgan - (Grievor) - North Vancouver

AWARD OF THE ARBITRATOR

There is no dispute as to the facts. At approximately 0515 on the day in question the yard foreman, Mr. Nelles, for whose crew the grievor was engineman, was given instructions by way of a "switoh list" to move certain cars. In particular, he was to pick up a caboose and five double trailer flat cars, and to spot the trailers on the unloading track. After the movement of the caboose and trailer flat cars had commenced, the grievor stopped the movement and requested one of the yard helpers to advise the yard foreman that he did not wish to push the caboose beyond the main track switch. That is, the grievor considered that the caboose ought not to be included in the movement, as this was, in his view, contrary to a bulletin issued some years previously to the effect that unnecessary switching was not to be performed with a caboose. This message was passed to the yard foreman, who seems to have made no response. The movement oontinued, but after it passed the ramp track switch, and the engineman realized that the foreman intended no change in plan, it was stopped again. The grievor requested the yard helper to repeat the message, and on this occasion the foreman came to the engine, and told the grievor that he would determine how the moves were made, and that the movement in question was not a switch in any event. Both the grievor and the yard foreman were adamant in their positions. The yard foreman went off to report the matter and, ultimately, the movement was completed by another crew.

The status of the bulletin by which the grievor considered himself bound is not clear. It would appear, however, that it would be improper, generally speaking, for yard crews to conduct switching operations with cabooses attached where this is not necessary. In any event, while the particular movement in question may not have been a "switch" within one of the limited senses of that term, it was part of the general "switching" operations carried out by a yard crew, and was within the scope of the bulletin. Strictly speaking, it was not "necessary" for the caboose to have formed part of the movement into the loading track. It could have been set off elsewhere, as the grievor thought ought to have been done. Within a literal reading of the bulletin, then, it may be that the movement intended by the yard foreman was improper. In my view, however, such a reading ought not to be given to the bulletin. Its purpose was clearly to prevent undue handling of cabooses, to prevent the risk of damage to them and to their contents. It does not set out an absolute prohibition against switching movements with caboose attached. It does not include the stricture that no such moves should be made unless "absolutely necessary" and in my view should be read as implying a standard of reasonableness. In the instant case, we are dealing with one movement of cars to which the caboose was attached, and it seems that the yard foreman was instructed that the spotting of the trailers on the unloading track was a matter of some urgency. In my view, while the matter is debatable, it was not a

clearly improper move for the yard foreman to direct. More importantly, it does not appear to have been the sort of matter over which the movement should have been stopped, although it was certainly not improper for the grievor to have brought it to the yard foreman's attention.

It is my conclusion that, in his ultimate refusal to proceed with the movement, the grievor was in fact refusing to follow a proper instruction. It may be, as I have suggested, that the instruction was a questionable one, and the grievor did question it. It was, however, proceeded with, and it was not, as I have said, so clearly wrong that the grievor was justified in refusing it. The case presented by the union related essentially to the nature of the relationship between the engineman and the yard crew, and the extent of the authority of each. I am in agreement with many of the perceptive comments made by the union in this respect. The provisions of the Uniform Code of Operating Rules which bear particularly on the matter are the following:

> 106. Trains will run under the direction of their conductors. When a train is run without a conductor the engineman will perform the duties of the conductor.
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> Conductors, engineman, and pilots, if any, are responsible for the safety of their trains and the observance of the rules and under conditions not provided for by the rules must take every precaution for protection. This does not relieve other employees of their responsibility under the rules.
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> 108. In oase of doubt or uncertainty the safe course must be taken.

In the instant case, the yard foreman was in the position of the conductor, and it was under his direction that movements were to be made. Nevertheless, the engineman carried a considerable responsibility for the operations of the movement, and, regardless of signals given, was under a paramount obligation to take the safe course. His obligation was not simply to follow unhesitatingly every signal given by the yard foreman. Suppose, to take an extreme example, he were faced with a signal indication prohibiting a forward movement, while at the same time a yard foreman was signalling him to go ahead. In my view, he would be entirely justified in refusing to proceed, at least until he was satisfied as to the propriety of proceeding. In the instant case, however, the situation was of a quite different sort. The determination of the appropriateness or efficiency of switching moves is one for the yard foreman. In the face of a specific safety hazard, it may then be the engineman's own responsibility to stop the movement, or even to refuse to accept an instruction. In the instant case, the risk, it may be said, was one of over-handling of a caboose. Even if (although I do not decide the point) it could be said that the yard foreman was wrong in not setting of the caboose first, and even if it oould be said that this was contrary to instruction, it was not the sort of matter over which the engineman could be Justified in stopping the movement. Any

responsibility he may have had with respect to the move was met when he drew the matter to the foreman's attention.

The grievor appears to have treated the matter as a question of principle. It is perhaps unfortunate that suoh a question should arise in the context of a disoipline case, since the grievor's conduct was not, in my view, blameworthy in the sense in which the oonduct of an employee subject to disoipline often is. Nevertheless he took his stand in this way, and the matter must be determined accordingly. For the reasons given, it is my view that the grievor was not Justified in refusing to accept the yard foreman's signal in this partioular case. He was therefore subJect to discipline.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR