

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 341

Heard at Montreal, Tuesday, March 14, 1972

Concerning

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Discipline assessed case of bus operator S. Mason, who under date of December 29, 1970, was advised..

"effective December 22, 1970, your record has been assessed with 30 demerit marks and time out of service to count as suspension for the following reasons: Failure to adjust to road conditions while operating Gray Coach Bus "#2066, December 19, 1970, on Ontario Northland schedule trip #15 near Sand Dam, Ontario."

JOINT STATEMENT OF ISSUE:

The union contends this discipline was not justified by the evidence produced at the investigation held on December 22, 1970, and requests removal of the demerit marks and payment for time lost of bus operator S. Mason from the time his investigation was completed on December 22, 1970, until he was returned to service on December 30, 1970.

FOR THE EMPLOYEES:

(SGD.) B. F. NEWMAN

FOR THE COMPANY:

(SGD.) E. A. FRITH
GENERAL MANAGER

There appeared on behalf of the Company:

D. V. Allen Employee Relations Supervisor, O.N.R., North Bay
J. H. Singleton Passenger Services Supervisor, O.N.R., North Bay

And on behalf of the Brotherhood:

G. W. McDevitt Vice President, U. T. U. -- Ottawa
E. J. Fulford Local Chairman, U. T. U. -- North Bay

AWARD OF THE ARBITRATOR

The grievor, a Bus Operator, was assessed 30 demerit marks, with time

out of service counting as suspension, as a result of an accident in which he was involved on December 19, 1970. The issue is whether this discipline was imposed for just cause.

The grievor was scheduled to take out scheduled Trip No. 15, due to leave North Bay for Timmins at 12:10 a.m. on Saturday, December 19, 1970. The grievor was late arriving for work, and the bus did not leave North Bay terminal until 12:55 a.m., proceeding northbound on Highway 11. At about 1:15 a.m., at a point on the highway some ten miles or so north of North Bay, the bus went into a skid and left the road, broke through the guard rail, plunged down an embankment, and came to rest some distance from the highway. There were no other vehicles involved, and there was no mechanical failure of the grievor's bus.

It had been snowing during the evening and the road was slippery it seems, although the general condition of the road is described as "good" in the Provincial Police report. The only evidence as to the actual happening of the accident is that of the grievor himself, in the statement given at the investigation. It is as follows:

"It was closer to 1:15 a.m. The road was greasy and slippery and I slowed down prior to the hill and just going down the hill I could feel bus sliding to the right. The steering was turned to the left to correct the skid, and the bus was heading directly towards Rock Cut and then turn right to miss Rock Cut and back of bus slid to the left. At this point the bus was facing East across the highway. Realizing that any further attempts to straighten bus would possibly roll it. And it would respond and I let it go straight into the ravine hoping to keep it in an upright position."

The grievor stated that his speed was in the 40 to 45 m.p.h. range, and there is no evidence to the contrary. The Company's case is, essentially, that on his own statement it appears that the grievor was negligent in his operation of the bus. As to the investigation, which was the subject of comment in the Union's brief, I would note that there appears to be nothing improper in the way it was conducted or in the questions put. The grievor expressed his satisfaction with it at the time. The grievor was advised of the discipline on December 29, 1970, having been held out of service until that time. The reason given for the imposition of discipline was "failure to adjust to road conditions" at the time and place in question.

The only respects in which the grievor might be said to have failed to adjust to road conditions, or to have been negligent in any respect were in the speed at which he was driving, which might have been a contributing cause of the skid, and the measures which he took to correct the skid. As to his speed, there is no evidence that the speed at which the grievor was driving was unreasonable, having regard to road conditions. In questioning the grievor the Company's supervisor noted that only an hour before, three buses had come through the area, maintaining close to schedule times. The grievor's reply, that the road was greasy and slippery and that his speed was what he felt was governed by the conditions, quite properly accounts for his having gone at a slower speed than others. If he had driven even more slowly, then perhaps the accident would not have occurred,

but the question is whether the grievor's speed was reasonable in the circumstances. As to this, it can only be said that the grievor was aware of the existing conditions, and that he had reduced speed accordingly. He did adjust to road conditions, and there are no criteria established in the material before me by reference to which it could be said that the adjustment he made was unreasonable.

The measures he took to correct the skid consisted primarily of turning the wheel in the opposite direction to the skid. Generally, the appropriate action is to turn into the direction of the skid. While in most cases this procedure would no doubt allow a driver to regain control of his vehicle, in the instant case the skid was by the rear of the bus, which was sliding to the right, that is, off the highway. It may be that there was simply insufficient room to allow this corrective measure to take effect. In any event, the action taken by the grievor was successful to the extent that the first skid was corrected. It was followed, however, by a skid to the left, which the grievor corrected by turning to the right, so as to miss what he described as a "rock cut" on the left - hand side of the highway. While there does not seem to have been a rock cut of any appreciable size at that point, in any event the bus responded to some degree. The grievor let the bus go straight ahead, so that it left the highway at a curve.

Whether or not there could be said to have been "negligence" as that term might be used in a civil action, the issue here is whether the grievor's conduct subjected him to discipline. In my view, it is a fine point whether the grievor committed any error of judgment at all. At the most however, it was only an error of judgment, and not an example of the sort of carelessness or inattention to duty which would subject an employee in his position to discipline. That the vehicle went into a skid in the first place may perhaps be attributed to the speed at which the vehicle was moving - among other factors. But the grievor, because of the road conditions, was travelling at a reduced speed which seemed to be appropriate. It is very hard to conclude from this that the grievor was blameworthy because the skid in fact occurred. When it did occur, his actions prevented the vehicle from going off the road on a lateral motion and thus, it would appear, from rolling over. It may be, although this is just surmise, that his actions also had the result of exaggerating the unwanted movements of the vehicle, but even if this is so, it left the road on a forward motion and did not roll over, so that, in the end, the injuries and damages were not as great as they might have been.

The case is to be distinguished from Case No. 303, to which I was referred. There, the grievor passed a stop indication, by reason of an error of Judgment on his part. The circumstances, and the nature of the error, were quite different. The penalty imposed was, as was suggested, severe and the award cannot be read as approving the extent of the suspension imposed. The question, in any event, is not simply whether there was an error of judgment, but whether there was the sort of error which calls for the imposition of discipline.

Article 23 of the collective agreement provides that employees may be held out of service for investigation for not more than three days, except in cases of dismissable offences, when they may be held out of

service pending the rendering of a decision (to be given within the time limits specified in Article 23.1). Where discipline is found to be unjust, compensation is to be paid, pursuant to Article 23.1, at the rate of a minimum day for each 24 hours of time held out of service at schedule rates for his class of service. In addition, the employee would be entitled to payment of holiday pay or other benefits lost as a result of such improper discipline.

In the instant case, having regard to the material before me, it is my conclusion that it has not been established that there was proper cause for the imposition of discipline on the grievor. The demerit marks are accordingly to be removed from his record, and he is to be compensated in accordance with the preceding paragraph of this award.

J. F. W. WEATHERILL
ARBITRATOR