

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 357

Heard at Montreal, Tuesday, May 9th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (E)

DISPUTE:

Discipline assessed Fireman/Helper H. E. Taylor for failure to comply with requirements of train order No. 483 while employed as fireman/helper on train No. 146 April 7, 1971.

JOINT STATEMENT OF ISSUE:

Fireman/Helper H. E. Taylor was employed as the fireman/helper on passenger train No. 146 between London and Toronto on April 7, 1971. The crew on No. 146 was given train order No. 483 at London and this order called for a speed of 20 m.p.h. for all trains operating on the south track, between mileage 29 and mileage 21.5, Oakville Subdivision.

At mileage 27.1 Oakville Subdivision train No. 146 crossed over from the north to the south track. This train then proceeded down the south track through the slow order territory to mileage 22.1 at a high speed in excess of the 20 m.p.h. slow order.

Following investigation, the entire crew on train No. 146, including Fireman/Helper Taylor, were each assessed 30 demerit marks for failure to comply with the requirements of train order No. 483.

Fireman/Helper Taylor appealed the discipline assessed. The appeal was declined by the Company.

FOR THE EMPLOYEES:

(SGD.) O. W. MILES  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. L. CRUMP  
ASSISTANT VICE-PRESIDENT -  
LABOUR RELATIONS

There appeared on behalf of the Company:

D. C. Fraleigh	System Labour Relations Officer, C.N.R., Mtl.
C. F. Wilson	Labour Relations Assistant, C.N.R. Montreal
H. V. Mann	Manager, Rules, C.N.R., Toronto
A. F. Williams	Master Mechanic, C.N.R., Toronto

#### AWARD OF THE ARBITRATOR

There is no doubt that the grievor's train did proceed down the track in question at a speed substantially in excess of the slow order. The prime responsibility in such a case may be said to be that of the engineman, although it is shared by members of the train crew, particularly the conductor. The fireman/helper, riding in the cab with the engineman, clearly has a rather special responsibility. Each case, however, must be considered on its own facts.

The grievor is an experienced employee and well aware of the requirements of the rules. He was not, however, familiar with the territory over which the train was operating, although he had worked on it some fifteen years before. On the day in question he had worked his regular assignment from Windsor to London, and then, since the relief fireman/helper had failed to appear, agreed to carry on to Toronto. He read the train orders, and knew there was a restricted speed order for trains on the south track between mileage 29 and mileage 21.5 on the Oakville Subdivision. As the train approached this area, the grievor mentioned the slow order to the engineman, who replied that they were on the north track. It was after this that the train crossed to the south track, but the slow order was not observed. The grievor stated that he then "assumed" that they had passed the area affected by the slow order. He had not, it may be observed, been provided with a copy of the appropriate timetable, although it seems the engineman had one. Nevertheless, it was wrong for him to make "assumptions" of this sort. It need only be added that there was no communication from the conductor or any other crew member, as there ought to have been, to indicate non-compliance with the train order.

That the grievor contravened the rules is clear, and he was therefore subject to discipline. In the circumstances, however, he ought not to have been subjected to the same penalty as the other crew members. He seems to have been the only one to have been concerned at all about the train order, the trouble was that he did not do enough about it. Having regard particularly to his lack of familiarity with the territory, it is my view that the penalty imposed on the grievor ought not to have been as severe as that imposed on the others, whose failure, it seems to me, was much more flagrant.

For these reasons, it is my view that the penalty imposed on the grievor was excessive. In the circumstances it is my award that the notation of thirty demerit marks be removed from the grievor's record. He was, however, subject to some discipline as has been noted. Assessment of ten demerit marks would not have been excessive, and that penalty may remain on the grievor's record.

J. F. W. WEATHERILL  
ARBITRATOR