

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 371

Heard at Montreal, Tuesday, July 11th, 1972

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Dismissal assessed locomotive engineer H. E. Bland. Request by Brotherhood for removal of discipline and full compensation for time lost due to dismissal.

JOINT STATEMENT OF ISSUE:

On December 9, 1971, Mr. H. E. Bland was the locomotive engineer on Train No. Extra 215 South (WL-590) a southbound ore freight Oreway, Nfld. and Sept-Iles, Quebec. Engineer Bland was charged with violation of Time Table speed restriction, Special Instructions Nos. 47 and 48 and General Rules "B" and "E" of the Uniform Code of Operating Rules. Following an investigation of the incident held on December 15, 1971, Mr. Bland was dismissed from Company service. The Brotherhood of Locomotive Engineers appealed the discipline assessed as extremely severe and unwarranted and should be removed. The Company refused to remove the discipline.

FOR THE EMPLOYEES:

(SGD) R. A. SMITH
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) P. L. MORIN
SUPERINTENDENT, LABOUR
RELATIONS

There appeared on behalf of the Company.

J. Bazin	Counsel
P. L. Morin	Superintendent Labour Relations, QNS&L Rly. Sept-Iles, Que.
F. LeBlanc	Assistant Labour Relations, QNS&L Rly. Sept-Iles, Que.
T. Leger	Assistant Labour Relations, QNS&L Rly.
D. B. Neufeld	Superintendent, Administration, QNS&L Rly.
W. A. Adams	Road Foreman of Engines, Transportation, QNS&L
E. Trepanier	Road Foreman of Engines, Transportation, QNS&L

And on behalf of the Brotherhood:

R. A. Smith

General Chairman, B. L. E., Sept-Iles, Que.

AWARD OF THE ARBITRATOR

It is clear from the grievor's own statement that between Mile 78.5 and mile 63, the grievor's train proceeded at a speed as high as 40 m.p.h. The speed recorder tape indicates speeds up to 39 m.p.h., and while the grievor did not sign the tape when it was removed from the locomotive (as Article 25.02 provides for in certain cases) there can be no objection to its use in this case since the grievor himself made no report of the incident until he was called by the foreman who detected it from the tape, and since it confirms the grievor's own statement in any event. Throughout most of the track in question, there was a speed restriction of 20 m.p.h. on ore cars.

Clearly, the grievor, as engineer, was in violation of the speed restriction, and to a very substantial degree. There is also a responsibility on the conductor and brakeman, and these employees, it seems, were disciplined over the incident. They had, however, met at least part of their responsibility by drawing to the attention of the engineman that the train was travelling at an excessive speed. He replied to the conductor that the train was under control, and to the brakeman that it was slowing down. According to his own statement the train had gotten out of control, for he speaks of bringing it under control gradually by increasing brake applications. There is no doubt as to the violation, and there should be no doubt as to its seriousness. The area in question is the steepest on the line, and there are a number of curves. The danger involved in moving a loaded ore train at nearly twice the proper speed over such track is apparent, and needs no elaboration.

In his defence, the grievor referred to adverse weather conditions obtaining at the time, and the poor condition of the equipment. Neither of these explanations can be considered satisfactory. If the weather conditions were adverse - and it appears that it was snowing heavily and the track was snow-covered in places - then the obvious course would have been to err on the side of slow, rather than excessive speed, so that any tendency to accelerate could be accommodated. Apart from this, it is significant that the same equipment, on its next trip, passed the same area which again was snow-covered, without mishap. As to the condition of the equipment, although there was evidence of considerable difficulty having been experienced with it there is no evidence of any particular defect on the day in question. The grievor stated that the required brake test had been made at Oreway prior to his departure, and it is of course noteworthy that he did not feel the need to make any prompt report of any defects at the conclusion of the trip. He made as has been noted, no report until he was called by the foreman.

From all of the material before me the only conclusion which can properly be drawn is that the grievor negligently permitted his train to move over the track in question at a speed greatly in excess of the restriction. For this he would properly be subject to severe discipline. Indeed, it would appear from the Joint Statement of Issue that it is essentially the severity of the penalty which is in issue. In assessing the discipline imposed, regarding may be had to

the grievor's record. From this it appears that he was assessed thirty demerit marks in 1966 for a violation of the Uniform Code of Operating Rules, was disciplined in 1968 with respect to a matter involving availability and was discharged in 1970 on a similar matter. He was reinstated in 1970 "on a leniency basis". There is nothing in this record to ameliorate the seriousness of the grievor's offence, or to engender confidence in his responsibility as an engineman. The Job is, it need hardly be said, a responsible one.

For all of the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR