

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 373

Heard at Montreal, Tuesday, September 12, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Discipline assessed record of Conductor P.S. Chisholm and Brakeman E.H. Rimmer.

JOINT STATEMENT OF ISSUE:

On May 21, 1970, Conductor P.S. Chisholm and Brakeman E.H. Rimmer were assigned to the "GO" transit passenger service and handled train No. 923 from Pickering to Oakville, Ontario. While enroute to Oakville, the brake shoes of Diesel Engine 9806, which was located at the rear of the train, caught on fire and caused extensive damage to the engine.

For responsibility in the matter, Conductor Chisholm was assessed 5 demerit marks and 3 days suspension and Brakeman Rimmer was assessed 10 demerit marks.

The Union requested that the discipline be removed from both employees, and that Conductor Chisholm be compensated for lost time, on the grounds that: "the engine is the responsibility of the Engineman." The request was declined by the Company.

FOR THE EMPLOYEES:

(SGD.) G. R. ASHMAN
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

A. J. DelTorto	System Labour Relations Officer, C.N.R., Mtl.
A. D. Andrew	System Labour Relations Officer, C.N.R., Mtl.
J. R. Thompson	System Rules 7 Time Service Officer, C.N.R.
J. T. Pattinson	Trainmaster, C.N.R., Toronto

And on behalf of the Brotherhood:

G. R. Ashman	General Chairman, U.T.U.(T) Toronto
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J. B. Meagher

Vice Chairman, U.T.U. (T) Belleville

AWARD OF THE ARBITRATOR

The discipline assessed against the two grievors is separately based in each case, and the two must be separately considered.

Conductor Chisholm required the usual brake test to be performed and was entitled to consider, in the circumstances, that it had been properly done. When, however, the train first attempted to leave the station at Pickering and then stopped after a few feet, he ought to have seen to it that an inspection was carried out to determine what it was that was holding the train. At the time, the train was proceeding in a westerly direction, being pushed by the engine in the rear, while the conductor was riding with engineman in the cab control car at the head of train. He knew that the engineman had not deliberately stopped the train, and he quite properly checked the hand brake at the east end of the cab control car. That brake being off, he ought then to have ensured that other brakes were off, most notably the independent brake on the engine. An unexplained stop of that kind surely calls for at least a quick check of the braking system. This was the conductor's responsibility, and it was not met in this case. There was, therefore, justification for the imposition of discipline.

Brakeman Rimmer was required to carry out a standard brake test prior to the train's leaving Pickering. The test required him to ensure that "the brakes on all cars added and on the rear car of the train apply and release". At the time the engine was at the rear of the train. The brakes on the engine may be applied either through the "train brake" system, which involves the brakes throughout the train, or through the "independent brake" which involves the brakes of the locomotive only. Whichever system is used, the same brake shoes apply to the wheels, and in the case of the engine brakes both systems are power systems, and when the brakes are applied the pistons which hold the brake shoes against the wheels are clearly visible. In this case brakeman Rimmer saw the exposed pistons and knew the brakes were applied while the train brake controls were operated so as to release the brakes, the engine brakes were not in fact released because the independent brakes were still applied. Brakeman Rimmer could not know this, however, because all he could observe was the fact that the pistons were exposed and the brakes were on. He did not, then, ensure that the brakes on the rear car of the train applied and released. The major cause of the subsequent damage was, it must be said, the failure of the fireman to release the independent brake when the train started, a failure which was particularly remarkable when the train stopped and then started again. But this does not reduce the responsibility of the brakeman for carrying out the brake check.

It is the Union's position that the brakeman was not in violation of the rule because the engine was not "the rear car of the train". In view of the obvious purpose of the brake test it would be my view that even if the engine could not properly be described as a "car", the brakeman ought to have ensured that its brakes applied and released. The case was argued, however, primarily on the question

whether the engine was, in the circumstances, "the rear car of the train". Certainly there is a clear distinction to be drawn for many purposes between an engine and a car of a train. In the particular circumstances, since the train was being pushed, the brakes were controlled, not from the engine, as is usually the case, but from the car at the front of the train where controls were and where the engineer, for the westward movement was located. Since the purpose of the brake test was to ensure that the brake were operative throughout the length of the train, and since the engine was at the end of the train, it would be futile to ignore the brakes on the engine because of the view that the engine was not a "car". For the purpose of the brake test, the natural and sensible reading of General Instruction T.315 (a) is that "the rear car of the train" may in some circumstances - as in the instant case - be an engine. Brakeman Rimmer ought to have ensured that the brakes on the engine applied and released. He saw they were applied, but did not ensure they would release. In the circumstances, discipline was justified.

For the foregoing reasons the grievances must be denied.

J. F. W. WEATHERILL
ARBITRATOR