

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 450

Heard at Montreal, Tuesday, June 11th, 1974

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Assessment of 15 demerit marks to Conductor L. J. Yates.

JOINT STATEMENT OF ISSUE:

On January 17th, 1974, Conductor L.J. Yates was assessed 15 demerit marks because he was involved in an accident while handling a train.

The Union contends that the handling of the train was made in a safe movement and see no violation of Rule 12 of Uniform Code of Operating Rules.

The Union requested to have the 15 demerit marks removed from L. Yates' file. The Railway denied the claim.

FOR THE EMPLOYEES:

(SGD.) J. H. BOURCIER  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) F. LeBLANC  
SUPERVISOR  
LABOUR RELATIONS

There appeared on behalf of the Company.

|       |         |   |
|-------|---------|---|
| J.    | Bazin   | - Counsel   |
| F.    | LeBlanc | - Supervisor, Labour Relations, Q.N.S.&L.Rly.,<br>Sept-Iles   |
| R. P. | Morris  | - Trainmaster, Q.N.S.&L.Rly., Sept-Iles                       |
| N.    | West    | - Trainmaster, Q.N.S.&L.Rly., Sept-Iles                       |
| T.    | Leger   | - Assistant - Labour Relations, Q.N.S. & L.Rly.,<br>Sept-Iles |
| C.    | Nobert  | - Assistant - Labour Relations, Q.N.S. & L.Rly.,<br>Sept-Iles |

And on behalf of the Brotherhood:

J. H. Bourcier - General Chairman, U.T.U.(T) - Sept-Iles, Que.

AWARD OF THE ARBITRATOR

On January 17, 1974 the grievor was conductor of Yard Extra 246 at

Carol Lake Yard. An engineman and one brakeman were also involved in the operation of the train. All were bound by the provisions of the Uniform Code of Operating Rules.

At approximately 1300 hours the train, consisting of a locomotive and eight loaded cars, was backing up on the pellet plant lead, in order to enter the pellet plant. There was a door at the south end of the pellet plant which had to be lifted manually. The engineman was seated at the right hand side of the engine, facing south, and was on the outside of the curvature of the track leading to the pellet plant. The brakeman had permission to be absent briefly, at the time this move was made. He was not considered to have had any responsibility in what followed. The conductor, the grievor, was at the north end of the train, on the point of the movement as it approached the pellet plant his instructions were to wait for assistance before opening the door.

The movement stopped approximately two hundred feet from the pellet plant door, close to a crossing. The conductor then descended on the west side of the train (opposite the engineman, on the inside of the curve), intending to walk back to give verbal directions to the engineman to pull back to clear the crossing. He thought that the brakeman would be back in the cab by then to relay signals to the engineman. In any event, without any signal being given, the train then proceeded north again, and the cars were pushed into the closed doors of the pellet plant. Apart from the property damage involved in such an accident, the serious risk of accident to individuals need scarcely be emphasized.

The material portions of Rule 12 are as follows:

"Signals must be given from a point where they can be plainly seen and in such a manner that they cannot be misunderstood. If there is doubt as to the meaning of a signal, or for whom it is intended, it must be regarded as a stop signal.

When switching is being performed, either in road or yard operation, signals should be given, or relayed directly to the engineman. Conductors and yard foremen are responsible for seeing that the work is so organized and that trainmen and yardmen are in proper position to give or relay such signals accordingly.

When cars are being pushed by an engine under control of hand signals, the disappearance from view of the member of the crew or lights by which signals controlling the movement are being given must be regarded as a stop signal.

In the event of failure of radio equipment, or communication is interrupted during switching operations, the movement must be stopped at once and no further movement made, except as authorized by hand signals, or until radio communication restored.

Crews of trains or engines clear of main track must not give a proceed signal to an approaching train or engine."

The violation of this rule by the engineman is clear. He, along with the grievor, was assessed fifteen demerit points over the incident. Since the engineman seems to have proceeded without any signal at all, and, from his position, without being able to Judge the distance between the point of the movement and the door to the pellet plant he,clearly incurred a very serious risk.

While a conductor certainly is responsible for the movements of his train, this responsibility is not an absolute one, in the sense that he cannot properly be penalized for movements which he is powerless to control, or which may even be contrary to his indications. The train being stopped, and no signal being given, it was reasonable for him to consider that it would not move again until a proper signal was given.

While the conductor therefore was not directly responsible for the move which caused the damage, he had an overall responsibility for the switching method in use. This method necessarily involved a loss of sight lines since the conductor was aware the brakeman was temporarily absent, and since, riding the point, he would necessarily lose sight of the engineman. When the train stopped, had he descended on the west side of the train, he could then have walked wide of the track and been in a position to pass signals. His getting off on the other side was based on the assumption that the brakeman would have returned; this assumption was not a proper one in the circumstances.

The conductor's conduct, in the circumstances; constituted it may be thought, a poor exercise of judgment; I do not think it can be said to have constituted the sort of improper conduct which would call for the imposition of discipline. In any event, there was no justification for the imposition of a penalty on the conductor as severe as that imposed on the engineman even although the latter, perhaps, may be thought to have been lightly dealt with.

Having regard to the circumstances of this case, it is my conclusion that the Company has not shown that there was justification for the imposition on the grievor of the penalty in question. Accordingly, the grievance is allowed.

J. F. W. WEATHERILL  
ARBITRATOR