

CASE NO. 466

Heard at Montreal, Wednesday, September 11, 1974

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE

Discipline cases of Conductor W. I. Russill, Brakemen P. B. Becker and W. Moreton, Medicine Hat, and claim for wages lost account of mishap at Dunmore, Mile 139.4, Maple Creek Subdivision at 1615 on November 17th, 1973.

EMPLOYEES' STATEMENT OF ISSUE

The Union contends that the responsibility of Conductor Russill and Brakemen Becker and Moreton was not established by the evidence produced at the investigation or by the test runs instituted by the Company, as specified in Article 32, Clause (d).

The Company contends that the employees' responsibility was established by the evidence produced at the investigation and test runs and declines to remove the discipline.

FOR THE EMPLOYEES

(SGD.) R. T. O'BRIEN
General Chairman

There appeared on behalf of the Company:

L. J. Masur	Supervisor, Labour Relations, CP Rail, Vancouver
J. Ramage	Special Representative, Labour Relations, CP Rail, Montreal
J. Sparrow	Labour Relations Assistant, CP Rail, Montreal
W. Mummery	Assistant Superintendent, M.P.R.S., CP Rail, Vancouver

and on behalf of the Brotherhood..

R. T. O'Brien	General Chairman, U.T.U.(T) - Calgary
J. H. McLeod	Vice Chairman, U.T.U.(T) - Medicine Hat, Alta.
P. P. Burke	Vice Chairman, U.T.U.(T) - Calgary

AWARD OF THE ARBITRATOR

These grievances relate to discipline imposed following the collision

of Train Extra 8522 West of which the grievors, with Engineman I.J. Greenstein, were the crew, with Extra 5602 West, at Dunmore, on November 17, 1973. By way of discipline, Conductor Russill was reduced to the position of trainman, Head-end Trainman Becker was dismissed, and Rear-end Trainman Moreton was assessed thirty demerit points. In April, 1974, the company restored Mr. Russill to his Conductor status and returned Mr. Becker to service. The disciplinary records of the two employees were not otherwise altered, and the assessment of demerit points against Mr. Moreton was unchanged. The effective discipline which must now be justified by the company, then, consists of the demotion of Mr. Russill for a period of approximately five months, the suspension of Mr. Becker for such a period, and the assessment of thirty demerits against Mr. Moreton. I shall deal with the three cases in turn.

The grounds on which discipline was assessed against Conductor Russill were the following: "failure to take positive action to stop train prior to passing a Stop and Proceed signal resulting in a rear collision causing injury to fellow employees and damage to equipment; violation Rules 90A, 93, 106 Par. 2, 111 Par. 4, 285 and 291 UCOR, Section B Rule 24, Form CS44, and Rules 5, 22, 23 Paragraphs A, B and D Form 582..."

Rule 90A of the Uniform Code of Operating Rules is as follows:

"Unless otherwise directed by special instructions, on freight, mixed and work trains in motion between stations, conductors and enginemen will see that trainmen are at the front and rear of trains in position to observe the safe operation of trains, and, when practicable, exchange signals when approaching and passing stations. Approaching junctions, railway crossings at grade, drawbridges, points where trains may be required to stop, where trains are to be met or passed, and at a safe distance before descending heavy grades or at any point where failure of the brakes may be attended with hazard, a trainman must be within convenient access of the emergency valve."

With respect to Conductor Russill's alleged violation of this rule, it is the company's position that since Conductor Russill, riding in the caboose of Extra 8522 West, was aware, as the train approached Mile 136, that Signal 1375 had given an approach indication and that Head-end Trainman Becker was communicating on the engine radio, he ought to have instructed the latter to terminate that conversation. While it may be that some criticism on this line would be justified, Conductor Russill was aware of the position of the train and of the members of the crew. In a general way, the crew may be said to have been properly positioned, although if Head-end trainman Becker were using the radio, he would not at the same time have a clear view of the signal which it was important to observe. Nevertheless I think it is difficult to say that Conductor Russill was actually in violation of Rule 90A.

Rule 93 Par. 2 of the Uniform Code is as follows:

"Within yard limits the main track may be used clearing the time of first and second class trains at the next station where time is

shown. Protection against third class, fourth class, extra trains and engines is not required.

Third class, fourth class, extra trains and engines must move within yard limits at restricted speed unless the main track is known to be clear.

NOTE: In ABS territory, indications permitting trains or engines to proceed do NOT relieve third class, fourth class, extra trains and engines from the requirement of moving at restricted speed, except that 'CLEAR SIGNAL' Rule 281 may be accepted as indication that the track is clear, but only to the next signal, or 'Block End' sign."

"Restricted Speed" is defined as follows:

"A speed that will permit stopping within one-half the range of vision.

Where ABS rules, interlocking rules or signal indications require movement at restricted speed, such movement must be made at a speed that will permit stopping within one-half the range of vision, also prepared to stop short of switch not properly lined, and be on the lookout for broken rail, and in no case exceeding SLOW SPEED; SLOW SPEED - A speed not exceeding fifteen miles per hour."

When the train passed the East Yard Limit sign at Dunmore, it was travelling at approximately 40 m.p.h., at least 15 m.p.h. over the limit. Whether or not Conductor Russell should be expected to have personally observed the yard limit sign, he was aware that it was there, of its effect, and of the location of the train with respect to it. He took no action because, as he stated, he at no time considered that the engineman did not have the train under control. That assumption, however, is one which he should have tested against the actual movements of trains with relation to signs and signals. It was incumbent on the conductor to assure himself that Rule 93 was in fact being complied with. This he failed to do, and this failure was a contributing cause of the collision.

Rule 106 para. 2 is as follows:

"Conductors, enginemen, and pilots, if any, are responsible for the safety' of their trains and the observance of the rules and under conditions not provided for by the rules must take every precaution for protection. This does not relieve other employees of their responsibility under the rules."

This general provision for responsibility does not really add a new offence to those which might otherwise have been committed.

Rule 111, para. 4 is as follows:

"Conductors and trainmen must know that cars in their trains are in good order before starting and inspect them whenever they have an opportunity to do so. All cars taken in their trains en route must be examined with extra care."

As to this, Conductor Russill stated that he did not test cars CP 338997 and 330449 when they were taken into his train, as they had been tested by carmen at Medicine Hat on a previous trip. The fact is that no test or examination of these cars was made after they were incorporated into Train Extra 8522 West. While it is said that a No. 2 air brake test was made prior to leaving Maple Creek, there is no doubt that there was opportunity then to inspect the train, and it seems likely that such inspection would have revealed the bent bleed cock rod which rendered the brakes on CP 338997 inoperative. In my view, Conductor Russill did violate this rule.

Rule 285 is as follows:

"Approach Signal.

Proceed, preparing to stop at next signal. Trains exceeding medium speed must at once reduce to that speed. Reduction to medium speed must commence before passing signal."

"Medium Speed.

A speed not exceeding thirty miles per hour."

As to this, Conductor Russill acknowledged the approach signal called by Trainman Moreton in the area of Mile 136. The train should then have reduced speed, and should have been travelling at medium speed. Whether or not Conductor Russill should have gotten up from his desk to check the indication, he should certainly have then been alert to assure himself that by the time the train passed the signal reduction to medium speed had begun. He took no action in this regard, and was in violation of Rule 285.

Rule 291 is as follows:

Stop and Proceed Signal. "Stop, then proceed at restricted speed." Signal 1393 was a stop and proceed signal. At the time the train passed the signal, it was travelling at 15-20 m.p.h. On the material before me, it does not appear that Conductor Russill took any action to attempt to comply with signal 1393. He was clearly in violation of Rule 291.

Section B, Rule 24, Form CS44 is as follows:

"No employee shall transmit any unnecessary, irrelevant or unidentified communication, nor utter any obscene, indecent or profane language via radio."

It is true that Trainman Becker did prolong a radio conversation with the Customer Service Centre at Medicine Hat at a time when close surveillance of the train's operation was required, and it is true that none of the crew members raised any objection. The continuance of the conversation and the failure to object to it were instances of poor operating procedure on the part of the crew and contributed to the other rule violations that are noted herein. It was not otherwise the sort of conversation which could be said to constitute a misuse of the radio facility of the sort which would constitute a violation of this rule. In my view, there was not a violation of this rule in the circumstances.

Rule 5 of Form 582 is as follows:

"A train must not be allowed to proceed until the proper train brake test has been completed. The engineman and Conductor shall be jointly responsible for knowing that the prescribed brake application and release tests have been made."

The material portions of Rules 22 and 23 of Form 582, which relate the matter of the brake test required, are as follows:

RULE 22

A No. 1 test of train brakes must be made at the terminal at which a train is made up, or at the point at which a train is received in interchange, or as otherwise designated by the Railway.

RULE 23 (a)

Before making a No. 1 test of train brakes, the air brake system must be charged to within 15 pounds of standard air pressure for that train, but to not less than 60 pounds for a freight train as indicated by an accurate gauge at rear end of train, and to not less than 80 pounds for a passenger train. The brake system shall be examined for leaks and the necessary repairs made to eliminate excessive leakage. It must be known that angle cock, cut-out cock and retaining valve handles are properly positioned, that reservoir drain valves are closed, that air hose are properly coupled, and that handbrakes are fully released unless required because of grade. If the train is to be operated in electro-pneumatic braking, the brake circuit cables must be properly connected.

RULE 23 (b)

On receiving the signal to apply brakes for test, a 15-pound brake pipe service reduction must be made in automatic service operation, the brake valve lapped, and the brake pipe leakage noted as indicated by the brake pipe gauge. This should not exceed 5 pounds per minute. A further brake pipe reduction should then be made to ensure a full service brake application. The train shall then be examined to see that brakes are applied on each car and that piston travel is within permissible limits. When this inspection has been completed, the release signal must be given, the brakes released, and each brake inspected to see that it has released.

This test admittedly was not conducted prior to the departure of the train from Maple Creek. It appears that the cars in question had been tested in Medicine Hat although it is not clear from the material before me when this was done. Conductor Russill's crew went to Maple Creek on the day in question, picked up a number of cars and work equipment, and then proceeded in work service. When the crew returned to Maple Creek after this service, they set out the work equipment, switching out two loaded gondola cars - the cars in question - which, together with the engine and caboose were to be the train consist to Medicine Hat. It was thus that Extra 8522 was made up, and it was at that time that the train was constituted. As I read the rules, a No. 1 brake test was then required. The union contended that such a test was not necessary by reason of Rule 29

(c), which is as follows:

When solid blocks of cars added to a train at other than terminals have previously been charged and tested in accordance with Rules 23 or 24, only the brakes on the rear car of the train need be examined for application and release.

In my view, it cannot properly be said that Rule 29 (c) applied in the circumstances of this case. While the two cars in question may indeed have been examined by carmen at Medicine Hat before being taken to Maple Creek, the fact is that they were used in work service during the day, loaded with rails, switched out of the train as it was constituted for work service and then incorporated in the train then made up as Extra 8522 West. They could not be said to constitute a "solid block of cars added" in the sense of which article 29 (c) speaks. In my view, the proper test was not carried out, and there was thus a violation of Rule 5, and the related Rules, by Conductor Russill.

From the foregoing, it will be seen that in my view Conductor Russill did violate a number of important rules as alleged by the company. He was subject to discipline on that account. Since, however, I have found that certain of the company's allegations - that is, with respect to Rule 90A and Rule 106 of the U.C.O.R., and Rule 24 of Form CS44 - have not been made out, it is my view that the penalty imposed must be reduced somewhat to take this into account. In all of the circumstances, the five-month demotion of Conductor Russill should be reduced to one of four months, and he is to be compensated accordingly for his loss of earnings during the last month of his demotion.

The grounds on which discipline was assessed against Trainman Becker were the following: "Failure to take position action to stop train prior to passing a Stop and Proceed signal resulting in a rear collision causing personal injury to self and fellow employees and damage to equipment; violation Rules 90A, 93, 111 Par. 4, 285 and 291 UCOR, Section B Rule 24 Form CS44 and Rules 3, 5, 22, 23 Paragraphs A, B and D Form 582....".

That portion of Rule 90A which applies to trainmen requires that, in circumstances such as those of the instant case, they be positioned within easy access of the emergency valve. In this case, Trainman Becker was occupied on the radio, in the centre of the cab, and was not in a position to observe signals or to be within convenient access of the emergency valve. In his statement, Trainman Becker said that he could have taken up such a position, but that the engineman could observe a clear view ahead. In view of his knowledge that Signal 1375 displayed an approach indication, and that the train must therefore be prepared to stop at the next signal, it must be considered that Trainman Becker's failure to take up a proper position constituted a violation of Rule 90A.

As to Rule 93, set out earlier, it is clear from the facts which have been stated that there was a violation of this Rule by Trainman Becker. The speed requirements were not met, nor did the grievor take any steps to ensure that they were met.

As to Rule 111, the same considerations which applied in the case of Conductor Russill apply here. The grievor, having the opportunity to do so, did not inspect the train. There was a violation of this rule.

As to Rule 285, it is clear that the grievor did nothing to ensure compliance with the speed requirements. He did not advise the Engineman to reduce speed upon observing the approach signal, and when the train subsequently passed the yard limit sign, it was still travelling at a very excessive speed. The grievor took no actions about this, but was engaged on the radio at a time when he should have been concerned with the train movements.

As to Rule 291, Trainman Becker did not observe the Stop and Proceed signal 1393 as soon as he ought to have, because he was engaged in a radio conversation. Having already passed an approach signal, and since the train was travelling at excessive speed, it was clearly incumbent on him to observe the signal indication as early as possible and to take appropriate steps. In my view, he was in violation of Rule 291.

As to Rule 24 of Form CS44, for the reasons given in the case of Conductor Russill, it is my view there was no violation of this provision. The grievor's use of the radio was improper at the time, as it led him to violate the rules above referred to, but it was not the sort of offence with which Rule 24 is concerned, in my view.

As to Rule 3 and the related rules of Form 582, it is my view, again for the reasons set out in the case of Conductor Russill, that the rules required that a No. 1 brake test be performed. That was not done, the test performed was not adequate, and there was a violation of the rule.

It will be seen from the foregoing that, with the exception of that relating to Rule 24 of Form CS44, the allegations against the grievor have all been made out. In my view however, the penalty imposed was justified even setting aside the matter of Rule 24. Apart from the negligence of the Engineman, which is not in issue here, it is clear that Trainman Becker bears a considerable responsibility for the serious accident which took place. I would not, therefore, vary the penalty in this case.

The grounds on which discipline was assessed against Trainman Moreton, who was the rear-end trainman on the day in question, were the following: "Failure to take positive action to stop train prior to passing a Stop and Proceed signal resulting in a rear collision causing personal injury to self and fellow employees and damage to equipment; violation Rules 93, 111 Par. 4, 285 and 291 UCOR, Section B Rule 24 Form CS44, and Rules 3, 5, 22, 23 Paragraphs A, B and D Form 582....".

As to Rule 93, as in the other cases it is clear that there was a violation of the rule. Trainman Moreton, riding in the cupola of the caboose, took no steps to ensure compliance with what he ought to have known were the speed requirements.

As to Rule 111, the same considerations which applied in the case of Conductor Russill apply here. There was a violation of this rule.

As to Rule 285, Trainman Moreton was aware that the train was travelling in excess of the permitted speed well after passing the approach signal. He took no action to correct the situation, and was in violation of the rule. The same must be said with respect to Rule 291: there was no attempt to alert either the Conductor or the Engineman to reduce the speed of the train to enable it to be stopped before passing signal 1393, a Stop and Proceed signal. Again, there was a violation of the rule.

For the reasons given in the cases of the other grievors, I find no violation of Rule 24 of Form CS44 in this case. As to Rule 3 and the related rules of Form 582, it is my view in this case as in the others that the failure to perform a No. 1 brake test was a violation of the rules.

Again, with the exception of that relating to Rule 24 of Form CS44, the allegations against the grievor have not been made out. In this case as in that of Trainman Becker, it is my view that the penalty imposed is justified notwithstanding the elimination of the alleged violation of Rule 24. The other violations constitute a sufficiently serious matter as to justify the penalty imposed, and I would not vary it.

For all of the foregoing reasons, the grievances are dismissed, save that in the case of Conductor Russill compensation for certain loss of earnings is to be paid in accordance with what is set out earlier in this award.

J. F. W. WEATHERILL
ARBITRATOR