

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 494

Heard at Montreal, Tuesday, January 14, 1975

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Dismissal assessed conductor S. Codner and brakeman R. Walsh.
Request by the Union for re-instatement of above employees and full compensation for time lost.

JOINT STATEMENT OF ISSUE:

On August 22, 1974 at approximately 13:10 hours, Conductor S. Codner and brakeman R. Walsh were members of the Crew consist on switching unit #220 in "C" Yard at Carol Lake (Labrador City, Nfld.) which was involved in a collision with a P & H Mobile Crane resulting in one fatality namely crane operator and one person seriously injured. Following investigation held on August 23, 1974 the above employees were found to be in violation of the General Notice, General Rules B, E and M and Rule 106 of the Uniform Code of Operating Rules, and consequently dismissed from Company service.

The United Transportation Union filed a grievance. The Company rejected same.

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:

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| J. Bazin | Counsel |
| F. LeBlanc | Supervisor, Labour Relations, Q.N.S.&L. Rly., Sept-Iles |
| M. Gauthier | Assistant Labour Relations, Q.N.S.&L. Rly., Sept-Iles |
| W. Adams | Trainmaster, Transportation |
| N. West | Trainmaster, Transportation |

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

The issue which arises in this case is as to the responsibility of the two grievors for the fatal accident which occurred in the circumstances described in the joint statement of issue. The fact that a fatality occurred is not itself an element to be considered in assessing the grievors, conduct. Rather it is a question of their compliance or otherwise with the rules, and the General seriousness, or degree of risk involved, in their conduct. There is also a question as to the extent of the penalty imposed on the grievors, particularly having regard to the fact that a lesser penalty was imposed on the engineman.

The material shows that the accident occurred while the grievors train, consisting of an engine and six cars, was making a northbound movement in the warehouse yard in Labrador City. They had picked up some cars at the south end of the team track, and were making a northbound reverse movement, the engine facing south. The grievors were at the south end of the train, on a flatcar, the conductor on the west side and the brakeman on the east side. The train moved northward approximately ten car lengths, at a speed of about five miles per hour, when the engine collided with a large mobile crane, which had been standing foul of the track.

The crane was a large yellow object, and the area was one of some activity. More importantly, the plan of the area shows that the crane was visible to both grievors, even riding on the rear car, from some distance, and tests revealed that, had the crane been observed, the train could have been stopped in ample time. The position of the conductor was such that his view might have been obstructed for part of the movement, but he could, keeping a proper look out, have seen it in time, and indeed it is questionable if he positioned himself and his crew member properly for a movement of that type. While there was radio contact available with the engineer, the latter could not see either of the crew members during this movement. The brakeman had a clear view of the crane throughout almost all the movement, that is from some six hundred and fifty feet to the point of impact. Proper attention on his part could have avoided the accident. The crews' attempts at warning the engineman by radio were, if indeed they were made properly at all (which does not appear from the statement of the engineman), made too late. It is clear that neither crew member had kept a proper lookout.

Certainly whoever was responsible for leaving the mobile crane foul of the line was himself a responsible party, and contributed directly to the accident. But whether the crane was so positioned through stupidity, inadvertence, uncontrollable accident or even sabotage, that would not affect the responsibility of the crew to observe the track, and ensure to the best of their power the safety of the movement. If the crew had been larger, then it may be that one alert crew member would have been able to prevent what happened. But the crew size was not a factor here, because the crew members might have been better positioned, so that signals could be relayed to the engineman, and because in any event both the crew members could have seen the danger in ample time, had they been looking.

The most immediate responsibility would seem, in the circumstances to be that of the brakeman, who had a clear view of the danger for

hundreds of feet. The conductor had an overall responsibility for the movement, he had positioned the crew badly, and he himself had a view of the danger for an important time. Having regard to all of the circumstances, it is my conclusion that the grievors were guilty of very serious negligence, and that there was just cause for their discharge.

It appears that the engineman, who had considerably more seniority than the grievors, was subjected to a lesser penalty. There are grounds of distinction in his case, since he was, for the purpose of operating his engine, positioned on the west side of the engine which was, as I have said, facing South. He did not have a view of the crane which was foul of the track. Without judging his case, it can be said that there are grounds of distinction between it and the case of the grievors, and I would not conclude that there had been any improper discrimination as between the two situations.

For all of the foregoing reasons I conclude that the discipline imposed was proper. The grievances are accordingly dismissed.

J. F. W. WEATHERILL
ARBITRATOR