CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 529

Heard at Montreal, Wednesday, October 15, 1975

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

And

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Dismissal assessed conductor R. Noel and twenty (20) demerit marks assessed to brakeman P. Kurylyk. Request by the Union for reduction of discipline of above employees.

JOINT STATEMENT OF ISSUE:

On May 14, 1975 at approximately 16:30 hours, conductor R. Noel and brakeman P. Kurylyk while handling CL-373, Extra West 213, on Northern Land Subdivision, allowed their train to pass Red Signal indicating the east limit of Radio Flagging Protection Order No. 5 and went by the limit approximately 1.5 miles.

Following investigation held on May 21st, 1975, the above employees were found to be in violation of General Rule B, D, and E, also Rules 10, 34, 106 and 210C of the Uniform Code of Operating Rules and Special Instruction G-47 of current Time Table No. 15, and consequently assessed the above discipline.

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

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD) H. LEBEL	(SGD) F. LeBLANC
GENERAL CHAIRMAN	SUPERVISOR - LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin	- Counsel
F. LeBlanc	- Supervisor, Labour Relations, QNS&L.Rly, Sept-Iles
W. Adams	- Trainmaster, Transportation, QNS&L.Rly, Sept-Iles
C. Nobert	- Assistant, Labour Relations, QNS&L.Rly, Sept-Iles
A. Belliveau	- Assistant, Labour Relations, QNS&L.Rly, Sept-Iles

And on behalf of the Brotherhood:

H. Lebel - General Chairman, U.T.U.&(T) - Sept-Iles
R. Noel - Grievor - Sept-Iles

AWARD OF THE ARBITRATOR

There is no real dispute as to the facts. Both the grievors are qualified conductors. Mr. Noel, who was conductor on the trip in question, had several years of experience, even though he had not been through the training program for trainmen. Mr. Kurylyk, acting as brakeman, had less experience, but there is no doubt that both men were qualified. The train for which they were responsible went past a yellow flag indication, and then a red flag indication without stopping. This was, as the grievors and the engineman well knew, contrary to the Operating Rules. They ought to have stopped the train and sought authority to proceed. The conductor and the engineman appear to have thought that it was safe for them to proceed at restricted speed, since they were aware that work being done on the line ought to have been stopped by the time of their train, and the men returned to camp. They of course did not know what the actual situation was, and simply took it on themselves to override the rules. The brakeman, Mr. Kurylyk did say that the train should be stopped, but the engineman overruled him, and the conductor allowed this to happen.

At the hearing, it was argued that the particular rules regarding this type of flagging were unclear. It may be that they required more clear statement, and efforts seem to have been made in that regard, since the time of this incident. While the employees may have thought it a matter of some debate, it is nevertheless clear from their own statements that they did not take what would be the proper course in the event of real doubt, namely to take the safe course and to seek instructions. The brakeman seems not to have been confused, but he was not listened to.

The responsibility of the conductor is clear, and it is aggravated by the fact that the brakeman had pointed out the need to stop. There can be no doubt that Mr. Noel was subject to very severe discipline as a result of this incident. The question is really one of the severity of the penalty imposed. There were at the time no demerits against his record, but on the other hand, he had been suspended for six months as a result of a somewhat similar rules violation little more than a year before the instant case. That suspension was upheld at arbitration: see C.R.O.A. Case No. 467. Having regard to this record, and to the nature of the offense, it is my conclusion that there was just cause for discharge in this case.

In the case of Mr. Kurylyk, it is my view that while he must bear some responsibility in the matter - he could, as was argued, have used the emergency brake - nevertheless it must be recognized that he did take steps to prevent the violation which occurred, and that he was overruled by employees of considerably greater experience. A lesser penalty was imposed on a brakeman in Case No. 482, although that employee's conduct seems to have been more blameworthy that the

grievor's. Having regard to all the circumstances, I conclude that the penalty imposed on Mr. Kurylyk was too severe, and that it should be reduced to one of ten demerit marks.

For the foregoing reasons the grievance of Mr. Noel is dismissed; that of Mr. Kurylyk is allowed in part.

original signed by (Sgd.) J.F. WEATHERILL
ARBITRATOR