

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 549

Heard at Montreal, Tuesday, May 11th, 1976

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal against discipline assessed Locomotive Engineer E.D. Olive of Ottawa, Ontario, requesting that the 10 demerit marks assessed effective January 19, 1975, be removed from the employee's record.

JOINT STATEMENT OF ISSUE:

On December 6, 1974, Mr. E.D. Olive was assigned as Locomotive Engineer on the 0845 hour Industrial Switcher at Walkley Yard, Ottawa, Ontario.

At approximately 1450 hours Locomotive Engineer Olive was involved in a rough coupling which resulted in an injury to an employee. Locomotive Engineer Olive was assessed 10 demerit marks for failure to properly control the speed of the engine resulting in rough coupline and personal injury to the Yard Foreman.

The Brotherhood appealed the discipline, claiming that it was not justified.

The Company has declined the Brotherhood's request.

FOR THE EMPLOYEE:

(SGD.) J. B. ADAIR
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. T. COOKE
ASSISTANT VICE-PRESIDENT -
LABOUR RELATIONS

There appeared on behalf of the Company:

G. A. Carra	-	System Labour Relations Officer, C.N.R., Montreal
M. Delgreco	-	System Labour Relations Officer, C.N.R., Montreal
J. J. Foss	-	Regional Master Mechanic, C.N.R., Montreal
R. Dixon	-	Master Mechanic, C.N.R., Ottawa

And on behalf of the Brotherhood:

J. B. Adair	-	General Chairman, B.L.E., St.Thomas, Ont.
E. J. Davies	-	Vice President, B.L.E., Montreal
D. Gillott	-	Local Chairman, B.L.E., Ottawa

AWARD OF THE ARBITRATOR

While it is acknowledged that the grievor did make a rough coupling on the occasion in question, it is the Union's position, essentially, that while this might be considered an error on the grievor's part - as indeed it was - it did not constitute the sort of misconduct for which demerit points should be assessed.

The material suggests that the grievor's engine was moving at four to five miles per hour (that appears to be the statement of both the grievor and the yard foreman; later in his statement the grievor said he was moving at "not more than four miles an hour". It cannot, I think, be said that the grievor was moving at an excessive speed, or that he did not have proper control of the engine. If that had been the case, as might be indicated as well by property damage or some notable personal injury, I would agree that discipline would be proper. I am satisfied that in the operation of a yard engine the occasional rough coupling may occur, even where proper care is being taken. It may be that it is an indication of a lapse on the employee's part, or it may be (as the grievor maintained in this case) that an engine will skid, even with moderate braking, in certain rail conditions. The point is that a relatively minor error of judgement, while it may certainly be brought to the employee's attention is not generally - unless it forms part of some pattern of careless work, or the like - a disciplinary matter.

In the instant case it appears there was an injury, apparently slight, to the yard foreman, who hit his knee against the heater. This injury would appear to be as much his fault as the grievor's, since he was standing in the middle of the cab - not, I think, a safe position in a coupling movement.

There was, then, a rough coupling, and it may show poor work on the grievor's part. But in the circumstances of this particular case, I do not think that it shows more than that. It was not the sort of misconduct or rules violation which would, of itself, justify the imposition of discipline. Accordingly, the grievance is allowed. The grievor is entitled to compensation pursuant to Article 89.

J. F. W. WEATHERILL
ARBITRATOR