

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.556

Heard at Montreal, Tuesday, June 8th,1976

Concerning

BRITISH COLUMBIA RAILWAY

and

TRANSPORTATION-COMMUNICATION DIVISION OF B.R.A.C.

DISPUTE:

Assessment of 20 demerit marks against the respective records of following employees for violation of the Uniform Code of Operating Rules (Revision 1962) as noted:

Operator L.R. Hutchins - assessed 20 demerit marks for violation of Rule 210.
Operator K.W. Taylor - assessed 20 demerit marks for violation of Rule 210.
Train Dispatcher L.A. Moreau - assessed 20 demerit marks for violation of Rule 206.

JOINT STATEMENT OF ISSUE:

1. Under date of December 11, 1975, Operator L.R. Hutchins was advised by Railway Form 243, No. 4517, that effective December 10, 1975, his record had been assessed with 20 demerit marks for violation of Rule 210 of the Uniform Code of Operating Rules on December 5, 1975.
2. Under date of December 15, 1975, Operator K.W. Taylor was advised by Railway Form 243, No. 4521, that effective December 10, 1975, his record had been assessed with 20 demerit marks for violation of Rule 210 of the Uniform Code of Operating Rules on December 5, 1975.
3. Under date of December 11, 1975, Train Dispatcher L.W. Moreau was advised by Railway Form 243, No. 4516, that effective December 11, 1975, his record had been assessed with 20 demerit marks for violation of Rule 206 of the Uniform Code of Operating Rules on December 5, 1975.
4. The Union has requested the assessed discipline be reduced.
5. The Railway has refused to reduce the discipline.

FOR THE EMPLOYEES:

(SGD.) T. B. GOODWIN
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) T. TEICHMAN
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

H. Collins	Supervisor Labour Relations, B.C. Rly., Vancouver
A. T. Shannon	Chief of Transportation, ' ' ' ' ' '

And on behalf of the Brotherhood:

T. B. Goodwin	System General Chairman, T-C Division of BRAC, Edmonton
L. A. Moreau	District Chairman, T-C Division of BRAC, Vancouver

AWARD OF THE ARBITRATOR

Rule 210 of the Uniform Code of Operating Rules is as follows:

"210. When a train order is transmitted, each operator receiving the order must, unless otherwise directed, repeat it at once from the manifold copy in the succession in which the several offices have been addressed. Each operator receiving the order must, unless relieved of the duty by the train dispatcher, check the other repeats for correctness. If an operator is so relieved, the train dispatcher must make record in the train order book. An operator must not be relieved of this duty unless one or more operators who have received the order are required to check each repeat.

When an order cannot be transmitted simultaneously to all, or if the repeat from any office is delayed, or is again required, train dispatcher must, when practicable, require an operator at an office from which repeat has already been made to check the correctness of each subsequent repeat. The office checking such repeats must be recorded in the train order book."

Shortly after 0200 on December 5, 1975, Dispatcher Moreau issue Train Order No. 210, addressed to certain trains at Lillooet and at Williams Lake. The Operators at those stations, Messrs. Hutchins and Taylor were required to repeat the order and, in the circumstances, to check the repeat given by the other. Operator Taylor correctly transcribed and repeated the order. Operator Hutchins, however, incorrectly numbered the order as "218" rather than 210. This was inattentive, because he had received Order No. 209 just a moment or two previously, and orders are numbered in sequence. This initial error ought to have been perceived when the order was repeated, and, indeed, ought to have been recognized when Operator Taylor repeated (correctly) his identical order. Operator Taylor admittedly was not paying sufficient attention to Operator Hutchins' repeat. Thus it must be concluded, and it is admitted, that both Operators were in violation of Rule 210.

Rule 206, in its material portions, is as follows:

"In transmitting and repeating train orders by telephone, train order numbers, and the numbers of trains and engines in the address, will be pronounced and then spelled letter by letter. All stations and numerals in the body of an order must first

be plainly pronounced and then spelled letter by letter, thus: Aurora A-u-r-o-r-a, and one nought five o-n-e n-o-u-g-h-t f-i-v-e.

When train orders are transmitted by telephone, train dispatcher must write the order as he transmits it, and check and underscore each word and figure each time it is repeated. When transmitted by telegraph, he must write it as it is being repeated the first time and check and underscore each word and figure each time it is repeated thereafter."

From the material before me, it appears that Dispatcher Moreau did not follow the procedure required in the last paragraph of Rule 206, in that he does not appear to have underscored each figure of the order given Operator Hutchins when it was repeated. He did not in any event detect the incorrect number which Operator Hutchins wrote down and repeated. It must again be concluded, and it is admitted, that there was a violation of the Rule.

The substantial issue in this case is as to the severity of the discipline imposed. The Union presented evidence of a number of instances in the past where employees who have been in violation of these rules were disciplined by way of caution, or the assessment of ten demerit points. From the Company's evidence, however, it is clear that in some cases more severe penalties have been imposed. Any violation of these rules is a serious matter. I think it is proper for the Union to distinguish between an error in the numbering of an order and an error in the substance of the message. While an error as to the number could, in some circumstances, have serious consequences, it is not in itself as grievous an error as some of those for which more severe discipline was imposed.

While the Company expressed concern with the frequency of rule violations, it remains that the assessment of discipline in a particular case is to be done on the basis of the circumstances of the case, and the disciplinary record of the employee. The assessment of twenty demerits is a heavy penalty in a system which contemplates discharge upon the accumulation of sixty demerits. Ten demerits is itself not an inconsiderable penalty. It is the penalty most usually assessed for violations of this sort, and the circumstances of this case do not appear to be such as to call for a penalty more serious than the usual one. I could not agree that the grievors' errors were minimal, and that only a caution should be issued: strict observance of these safety procedures must be enforced if accidents are to be avoided.

For the foregoing reasons, it is my view that there was not just cause for the assessment of twenty demerits in these cases, and that the grievors ought to have been assessed ten demerits in the circumstances. It is my award that their records be amended accordingly.

J.F.W. WEATHERILL
ARBITRATOR