

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.571

Heard at Montreal, Thursday, October 14th, 1976

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
and
UNITED TRANSPORTATION UNION (T)

DISPUTE:

Assessment of 40 demerit marks to Conductor D. Paquet for failing to comply with the instructions of a Company Officer at Victoria Mine, Mileage 21.4, Webbwood Subdivision, CP Rail on December 17, 1975, and his resultant dismissal account of accumulation of 60 demerit marks.

JOINT STATEMENT OF ISSUE:

Conductor D. Paquet who was working on Train No. 96 on Wednesday December 17, 1975, was instructed by a Company Officer to leave his train on the main track within yard limits at Victoria Mine and proceed with diesel unit to Crean Hill Mine, a distance of 3.5 miles to pick up outbound loads.

Conductor Paquet refused to follow the instruction to leave his train on the main track. He was removed from service and after an investigation 40 demerit marks were assessed his record resulting in his dismissal account of accumulation of over 60 demerits.

The Union contends the demerit marks and subsequent dismissal were not justified. The Union requested the discipline be removed and Conductor Paquet be reinstated in the Company's Service and that he be fully compensated for his loss of time from service. The Company contends the investigation was properly conducted and that Conductor Paquet was properly disciplined. The Company declined to reinstate Mr. Paquet.

The Union also contends the Company is in violation of Article 3 Clauses (c), (d) and (e) of the Collective Agreement and that compliance with the instructions given to Conductor Paquet by a Company Officer could have resulted in Paquet violating U.C.O.R. Rules 101 and 108, and that because of the authority given to Conductor Paquet by U.C.O.R. Rule 106, he was not guilty of insubordination. Furthermore, the Union contends Conductor Paquet did not receive a fair and impartial hearing.

FOR THE EMPLOYEE:

(Sgd.) L. H. Breen
General Chairman

FOR THE COMPANY:

(Sgd.) L.A. Hill
General Manager, O & M
(Eastern Region)

There appeared on behalf of the Company:

D. W. Flicker	Counsel, CP Rail, Montreal
R. Colosimo	Manager, Labour Relations, CP Rail, Montreal
E. S. Cavanaugh	Supvr. Labour Relations, CP Rail, Toronto
B. P. Scott	Asst. Supvr. Labour Relations, CP Rail, Toronto
E. J. Bradley	Manager, Rules, Safety, Training & Time Service, CP Rail
P. D. Gilmore	Asst. Superintendent, CP Rail, Sudbury
J. J. Deegan	Asst. Superintendent, CP Rail, North Bay

And on behalf of the Brotherhood:

L. H. Breen	General Chairman, U.T.U.(T), Montreal
M. W. Wright, Q.C.	Counsel, Ottawa
G. W. McDevitt	Vice President, U.T.U., Ottawa
C. J. Dagg	Local Chairman, U.T.U.(T), Sudbury
D. Paquet	(Grievor), Sudbury

AWARD OF THE ARBITRATOR

The first issue to be determined is whether there was cause to discipline the grievor. If there was, then a second issue is to be determined, namely whether the imposition of 40 demerits, resulting in the grievor's discharge, was appropriate. Apart from these issues relating to the merits of the case, there is a further issue relating to the propriety of the company's investigation of the matter and the sufficiency of its compliance with article 33 of the collective agreement. On this latter point it is my view that there was no failure to comply with the requirements of article 33 and that the grievor was not dealt with unfairly nor was he badgered or harassed at the investigation.

As to the first issue, it is the case that the grievor did in fact refuse to carry out the instructions of a company officer. This refusal related to a move which the grievor, as conductor, was required to make to Crean Hill Mine, to pick up certain cars. The grievor's train operated from Webbwood to Sudbury. At Victoria Mine, it was necessary to leave the main line and to proceed some 3.5 miles on the Victoria Mine spur to pick up the cars at Crean Hill. The train would then return to the main line and proceed.

Before arriving at Victoria Mine, with a train of some twenty cars, the grievor requested the engineman to pull the van up to Victoria Mine station, so that he could get on the dispatcher's phone. He then proposed to go on to Whitefish, approximately three miles further where, it seems, he proposed to leave the body of his train, off the main line, while proceeding back to the Victoria Spur to pick up further cars at Crean Hill. The engineman refused to move ahead at Victoria Mine, with the result that the grievor had to walk to the station. The engineman also indicated that he would not go on to Whitefish, as they held a wait order there for another train. The grievor, who did not want to leave his cars unattended on the main line, suggested the whole train be backed to Crean Hill on the Victoria Spur, but this suggestion was also refused by the engineman.

While the grievor was quite properly concerned over leaving cars

unattended on the main track, it does not appear that, in the circumstances, there was any very immediate danger, the next train not being due for some seven and one-half hours. Even if the grievor's train were to run into difficulties at Crean Hill or on the Victoria Spur, it would, in all likelihood, have been possible for steps to be taken to avert any danger on that account. The grievor's concern was, nevertheless, a proper one, and, from the point of view of safe operations, it is my view that either of the two moves proposed by the grievor would have been preferable. While the engineman's questioning of these moves was understandable, his simple refusal to carry them out is not so easy to understand, and would seem to have been improper.

The matter was reported to the Terminal Supervisor at Sudbury by both the grievor and the engineman, and the Terminal Supervisor relayed messages from the Assistant Superintendent. The latter's instructions were to the effect that the grievor should leave the train on the main track and proceed with the engines to Crean Hill. When these instructions were relayed to him by the Terminal Supervisor, the grievor replied that he was responsible for the movement of the train and that he did not consider that leaving the train unattended on the main track was a safe practice. He was advised that if he did not comply with the instructions, a spare man would be called. He replied that if those were the instructions a spare man should be called.

The conductor's responsibility for the safe operation of his train is set out in Rule 106 of the Uniform Code of Operating Rules, as follows:

106. Trains will run under the direction of their conductors. When a train is run without a conductor the engineman will perform the duties of the conductor.

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.

Reference may also be made to Rules 101 and 108:

101. Trains and engines must be fully protected against any known condition, not covered by the rules, which interferes with their safe passage.

When for any reason a portion of a train is left on the main track every precaution must be taken to protect the remaining portion against the returning movement.

In the absence of conductor at head-end of train when movement is commenced the engineman will arrange for the necessary protection. Torpedoes must be placed a sufficient distance in advance and in addition by night or when weather or other conditions require, a white light must be prominently displayed on the front of the leading

car.

The remaining portion must not be moved nor passed until the engine returns, unless the movement is adequately protected.

108. In case of doubt or uncertainty the safe course must be taken.

In this instance the company relieved the grievor of his responsibility, by removing him from service. Although the grievor requested that his instructions be issued in writing, this was not done. In this, the grievor may have been unduly technical, since an adequate record of the conversations was kept, and the instructions were repeated so that the grievor was clearly aware of what they were. It should be added that the back-up movement on the Victoria Spur was considered by the engineman to be unsafe, although it would be my view, from the material before me, that it would be made safely. The leaving of the train at Whitefish was, it would appear, thought to be inefficient.

Having regard to the material before me, what appears to have happened is that the company's officers preferred the suggestions of the engineman over those of the conductor as to how the train should be operated. These do not appear to me to have been circumstances in which such a matter should have arisen at all; even if the course the grievor proposed to follow was questionable, it was not so clearly improper as to justify appeal to company officers - indeed, as I have indicated, it does not appear to have been improper at all.

It remains that the grievor did in fact refuse to carry out the instructions of a company official. There are circumstances in which such a refusal may be justified, although the general rule is that an employee should obey the instructions of his supervisor, and grieve later if he wishes to do so: see, for example, C.R.O.A. Case No. 120. Circumstances which may justify a refusal to obey include considerations of the safety or legality of the required action. In the instant case, the propriety of the refusal, and indeed the question whether it really amounts to "insubordination" in the usual sense are to be considered as well in the light of the special responsibilities imposed on Conductors under the Uniform Code of Operating Rules. Here, the conductor had determined on a course which was not, to me, apparently unreasonable. He objected to the proposed course on grounds of safety, and while the proposed course was not, as I have indicated, one involving a high degree of risk, the grievor's objections were nevertheless not unreasonable. In these circumstances his insistence on what he considered the safe course must be regarded as in the exercise of his responsibilities. It should be added that there is nothing in the material before me which would lend weight to the allegation, implicit in the company's presentation, that the grievor acted from some ulterior motive.

Having regard to all of the circumstances, it is my view that the grievor's conduct on the night in question ought not to be regarded as an instance of insubordination in the usual sense of the term. It is my view that, in the circumstances of this particular case, the grievor's conduct was not such as to subject him to discipline.

There is accordingly, no occasion to consider the severity of the penalty imposed. For the foregoing reasons, it is my award that the assessment of 40 demerits be struck from the grievor's record, and that he be reinstated in employment without loss of seniority and with compensation for loss of earnings. His discipline record should be as it was as at the time of discharge.

J.F. WEATHERILL
ARBITRATOR