

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 690

Heard at Montreal, Tuesday, December 12th, 1978

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL - PA. REG.)

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Discipline assessed Conductor W. Belton, Trainmen J. Gullickson and G. O. Tirrell in connection with derailment of Train Extra 5820 West at Mile 94.5 Mountain Subdivision, November 26, 1977.

JOINT STATEMENT OF ISSUE:

Conductor W. Belton, Trainmen J. Gullickson and G. O. Tirrell were assigned to Extra 5820 West on November 26, 1977. At Mile 94.5 on the Mountain Subdivision, 78 cars, 4 diesel units and a robot car derailed. An investigation was held into this derailment. Conductor W. Belton was assessed 40 demerit marks, Trainmen J. Gullickson and G. O. Tirrell were assessed 25 demerit marks each, for failure to take positive action to stop Extra 5820 West when leaving Glacier, resulting in this train reaching an excessive rate of speed causing 78 cars, 4 diesel units and robot car to derail at Mile 94.5 Mountain Subdivision, November 26, 1977, a violation of Rule 106, Paragraph 2 Uniform Code of Operating Rules.

The Union appealed the discipline assessed Conductor W. Belton Trainmen J. Gullickson and G. O. Tirrell seeking removal of the demerit marks from their records on the grounds that they were not guilty of a rule violation and that their responsibility was not established by the evidence produced at the investigation as required by Article 32, Clause (d), of the Collective Agreement.

The Company declined the Union's appeal.

FOR THE EMPLOYEES:

(Sgd.) P.P. Burke
General Chairman

FOR THE COMPANY:

(Sgd.) J.M. Patterson
General Manager, O & M.
Pacific Region

There appeared on behalf of the Company:

P. E. Timpson	Asst. Supervisor, Labour Relations, CP Rail, Vancouver
W. C. Tripp	Superintendent, Revelstoke, CP Rail, Vancouver
W. J. Smith	Asst. Regional Mechanical Officer, CP Rail, Vancouver
J. T. Sparrow	Manager, Labour Relations, CP Rail, Montreal

And on behalf of the Brotherhood:

P. P. Burke	General Chairman, U.T.U.(T) - Calgary
R. T. O'Brien	Vice President, U.T.U.(T) - Richmond, B.C.
J. H. McLeod	Vice Chairman, U.T.U.(T) - Calgary
H. L. Smyth	Secretary-Gen. Committee of Adjustment, UTU(T)- Calgary

AWARD OF THE ARBITRATOR

The train in question was a Unit Coal Train, operating as Extra 5820 West between Golden and Revelstoke. The train had stopped at Glacier, while an eastbound train moved clear of the main track. To that point no significant problem had arisen with respect to the operation of the train. Trainman Tirrell was riding at the front of the train along with Engineman Hamm and Engineman - Trainee Thacker. Engineman-Trainee Thacker was at the controls as the train left Glacier, although Engineman Hamm took over later, when it had become apparent that a critical situation had arisen. Conductor Belton and Trainman Gullickson were riding at the rear of the train.

The precise cause or causes of the derailment had not, at the time of the hearing of this matter, been officially determined, the matter still being under consideration by the Canadian Transport Commission. It is not necessary, for the purposes of the decision in this case, to make any findings as to the actual cause or causes of the derailment. The issue is whether or not, in the circumstances as they then appeared, the grievors met the responsibility imposed on them both by the nature of their work in general and by Rule 106 of the Uniform Code of Operating Rules, in particular. The second paragraph of the Rule is as follows:

"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 pre- caution for protection. This does not relieve other employees of their responsibility under the rules."

Article 32 (d) of the collective agreement provides that no employee shall be disciplined until after investigation has been held and until the employee's responsibility is established by assessing the evidence produced. There was an investigation in this case and the Company did assess the grievors' responsibility in the manner indicated by the discipline imposed. The issue is whether that assessment was correct, that is, whether the grievors were disciplined for just cause.

From the material before me it would appear (although as I have noted I make no finding on the matter), that a substantial cause of the derailment was the failure of Engineman-Trainee Thacker to follow proper braking procedures when he took the train out of Glacier. Originally, Engineman-Trainee Thacker was assessed demerits on that account. Later, the Company removed the discipline imposed on him, apparently on the basis that Thacker had been acting under the supervision and control of Engineman Hamm, who was responsible for the operation of the engine and who shared, with the conductor, the

overall responsibility for the safety of the train. In these circumstances, the fact that Engineman-Trainee Thacker's discipline was removed cannot be said to constitute a form of unfair discrimination as between him and the grievors. The issue, then, remains: whether or not the grievors met their responsibilities in the circumstances as they obtained at the time.

A potentially dangerous situation arose almost immediately as the train proceeded west on the downward gradient out of Glacier. The authorized time table speed was 20 mph. At Glacier, Mile 85.5, the head end of the train was stopped at Mile 86.47. By the time the movement had reached Mile 86.66 (that is, after approximately 0.2 miles) a speed of 15 - 18 m.p.h. had been reached, and a brake pipe reduction was made. After the reduction was effected, the equalizing reservoir gauge read 68 lbs. It was said that no retardation was felt. In my view, the Engineman should, at that point, have become fully involved with the operation; it is not his case, however, that is in issue here. I do consider that at that point all members of the crew should have been attentive to the movement. The head-end trainman, being in the cab of the engine, should have become particularly alert. I would not say however, that there was as yet any cause for real alarm on the part of the conductor or the rear-end trainman. Such cause arose very shortly thereafter.

At Mile 87 the train was moving at 33 m.p.h. It was just out of Glacier and was already moving at a speed very much in excess of the authorized limit. The amount of the excess, and the obvious fact of such acceleration could not go unnoticed by all members of the crew. A further ten-pound brake pipe reduction was made, after which the equalizing reservoir gauge read 58 lbs. In a very general (and imprecise) way, it may be said that as the brake pipe pressure is reduced (and braking applied) the potential efficacy of an application of the emergency brakes is reduced. After the pressure has been reduced to a certain point, application of the emergency brakes is relatively ineffective. I speak only of the automatic braking system, over which all train crew members have control (in the sense of being able to use the emergency system), although the pressure in the pipe may already have been reduced by the action of the engineman, as was the case here.

At Mile 87.3, the train was travelling at 38 m.p.h., a further 10-lb brake pipe reduction was effected. At Mile 87.9, at a speed of 38 - 40 m.p.h., the emergency button at the head end was pushed. Speed continued to increase. At Mile 88.9 Engineman Hamm replaced Engineman-Trainee Thacker. At that point the speed was 43 m.p.h. At Mile 89 - 89.3 Rear End Trainman Gullickson physically "pulled the pin" separating the caboose from the rest of the train. Handbrakes were applied and the caboose stopped at about Mile 90.8

At Mile 89.5 the train had slowed to about 35 m.p.h. when the head end experienced a surge from the rear after which the speed increased to 43 m.p.h. at Mile 90, 60 m.p.h. at mile 91.8 and 68 m.p.h. through Flat Creek, Mile 93.1. The derailment occurred on a curve at Mile 94.5, and the leading three units, detached from the remainder of the train, stopped at Mile 94.9 with the independent brake applied. The Company estimates the total equipment damage as exceeding five million dollars.

The extent of the damage is not in itself an element to be considered in assessing the grievors' conduct - just as, in Case No.494, the fact that a fatality occurred was not such a factor. Rather, it is a question of the employees' compliance or otherwise with the rules and the general seriousness. or degree of risk, of their conduct.

In the instant case it may be that Engineman Hamm did not ensure that certain instructions relating to the operation of the engine coming out of Glacier were followed. The train crew, however, had not been given those instructions, and could not be blamed for any failure in that regard. It soon became obvious to them, however, that something was amiss, and knowing the nature of the movement and the territory each crew member should then have been fully alert to the situation.

It was when the second brake pipe reduction was made (at or after Mile 87, by which time the train was moving at 33 m.p.h.), that Trainman Gullickson called the head end to enquire as to the situation. Engineman- Trainee Thacker's reply was "Hang on, we're working on it". This was not, in my view an encouraging response. It takes no benefit of hindsight to recognize that the situation had become serious. Head-End Trainman Tirrell, in particular, should have been considering an emergency application at least by that point. It is understandable, of course, that he would hesitate to take the matter out of the hands of the engineman in that way, but he did know the nature of his own responsibility, and he was certainly aware that in cases of doubt (and there was then real doubt!) the safe course was to be taken.

Shortly thereafter, Rear-End Trainman Gullickson called the head end to ask if they were "going to get this thing slowed down". Engineman Hamm replied "we have got everything in her but the kitchen sink". Conductor Belton checked the air gauge with his light, noticed that it read 55 lbs but was going down, and so called the Engineman to ask if he was going to "hit it" (meaning make an emergency application), and received the reply "he Just did". Although the pressure then dropped to zero, Trainman Gullickson nevertheless pulled the emergency brake valve in the cupola, and later carried out the manoeuvre which has been described.

It is understandable, and proper, that the train crew should hesitate, in most circumstances, to resort to an emergency brake application. Such a procedure should certainly not be used unnecessarily. It is also understandable that the members of a train crew might defer, to some extent, to the particular skills of the Engineman in matters of engine operation. Further it must be borne in mind that the events in question occurred rather suddenly; there was not much time for reflection before it was too late.

While I bear in mind the considerations that have just been set out, I am nevertheless of the view that the grievors did not, in the circumstances meet the admittedly heavy burden of responsibility which their work involves. In the case of the Conductor, there is an overall responsibility for the safe operation of the train. That Conductor Belton should become concerned with the speed when he did, riding at the rear of the train, is understandable, but when the reply to Gullickson's first call was received, he should from that

moment on have been alert to the potential need for an emergency brake application. There was, in fact, sufficient time for him to reflect, to call the Engineman if he deemed it necessary, and to make a decision. By the time of the second call to the cab, there was really only one thing to do, and the Conductor should not have hesitated any longer to make the emergency application.

The other members of the train crew may perhaps be excused to some extent for having more hesitation in the matter. It should have become clear to them in very short order, however, that an emergency had arisen and an emergency stop made. They appear not even to have suggested that an emergency stop be made. In Case No. 529 a brakeman made such a suggestion, but was overruled by the engineman and conductor. It was held, in effect, that his duty was to proceed with the emergency application in any event, and it was found that he was subject to discipline, although the discipline imposed was reduced from twenty demerits to ten, on account of the circumstances.

For the reasons I have indicated, while I recognize that the position in which the grievors found themselves was a difficult one, it is my view that they were each, and most particularly the Conductor, under a responsibility to take positive action to stop the train. Their failure to do so subjected them to discipline. As has been noted in an earlier case, there are no very clear guidelines for assessing the discipline imposed in similar cases (each case turning on its particular facts). I do not consider that the penalties assessed go beyond the range of reasonable disciplinary responses to the situation.

For all of the foregoing reasons, the grievances are dismissed.

J.F.W. WEATHERILL
ARBITRATOR