

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 745

Heard at Montreal, Tuesday, March 11, 1980

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Dismissal of Locomotive Engineer R.P. Randall on April 25, 1979, for failure to take appropriate action to ensure extra train was operated at restricted speed after passing signal displaying other than "clear signal" and entering yard limits, violation rule 93 and note thereto, U.C.O.R., resulting in rear collision mile 1.0 Ignace Subdivision, March 16, 1979, and for using intoxicants while subject to duty, violation General Rule "G", U.C.O.R., Ignace, Ontario, March 15, 1979, and, while equipped with radio, for failure to communicate with crew at the rear of train between one and three miles from yard limits, violation Special Instruction "E" timetable No. 63 and paragraph 4.1(b), Sec. 2, form C. S. 44, Mile 2.1, Ignace Subdivision, March 16, 1979.

JOINT STATEMENT OF ISSUE:

On March 15, 1979, Locomotive Engineer R.P. Randall was called at Ignace, Ontario, at approximately 2005 hours to report for duty at 2130 hours for service as a Locomotive Engineer on a train operating in turnaround service between Ignace and Tache on the Ignace Subdivision. Engineer Randall reported for duty at the time ordered for and worked as Locomotive Engineer on Extra 5598 West from Ignace to Tache and on Extra 5598 East from Tache to Ignace. At approximately 0030 hours, March 16, 1979, Extra 5598 East, on which Mr. R.P. Randall was the Locomotive Engineer, struck the rear of a preceding Eastward freight train at mile 1.0 Ignace Subdivision. The preceding Eastward freight train was stopped on the Eastward main track and within yard limits at Ignace. On April 25, 1979, following an investigation by the Company which commenced on March 20, 1979, Engineer Randall was dismissed for the reasons cited in the Statement of Dispute.

The Brotherhood appealed the dismissal of Locomotive Engineer R. P. Randall requesting that he be reinstated in the Company's service with payment for time lost. The Brotherhood contended that Engineer Randall did not violate General Rule "G" U.C.O.R. and further that on the basis of a medical report submitted to the Railway Transport Coamittee at Engineer Randall's request and following the completion of the investigation by the Company, sufficient evidence had been produced to show that Engineer Randall had in effect suffered a blackout at Mileage 7, Ignace Subdivision, on the day in question and, therefore, could not be held responsible for other rule

violations.

The Company declined the Brotherhood's appeal.

FOR THE EMPLOYEE:

(SGD.) R. J. PERRY
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. J. SHEPP
GENERAL MANAGER - O. & M.

There appeared on behalf of the Company:

J. Ramage - Special Representative - CP Rail, Montreal
F. B. Reynolds - Asst. Supervisor Labour Relations, CP Rail,
Winnipeg
J. T. Sparrow - Manager, Labour Relations, CP Rail, Montreal

And on behalf of the Brotherhood:

R. J. Perry - General Chairman, B.L.E., Calgary
K. H. Burnett - General Chairman, B.L.E., Montreal

AWARD OF THE ARBITRATOR

The grievor, an employee of some 37 years' service, was dismissed by the Company on the several grounds referred to in the statement of dispute.

The grievor's dismissal was a result of a collision in which the train of which the grievor was the engineman struck the rear of a preceding train, which was stopped, properly, within yard limits at Ignace. Not all of the charges against the grievor were necessarily causes of the collision. The question, with respect to each charge, is whether it was justified in fact. The overall question is whether, on one or more of the grounds stated, there was just cause for the discharge of the grievor.

There is little dispute as to the facts. The grievor, as engineman, was responsible for the operation of his train (the responsibility of the other crew members is a separate matter). He did not in fact take appropriate action to ensure that his train was operated at restricted speed after passing the signal referred to. In fact, his train, then moving at a speed in excess of 35 m.p.h., struck the rear of the preceding train, killing two members of the crew who were in the caboose. The grievor was, without any doubt, in violation of Rule 93 of the Uniform Code of Operating Rules.

It is suggested that the grievor was not responsible for that violation because he had "blacked out". The evidence simply does not support that hypothesis. There is some medical evidence to suggest that the grievor might, for some reason, have "blacked out" but there is no actual diagnosis that he did so, and the most authoritative medical opinion is that he did not, or at least that his physical condition was not such as to make that a likely explanation. What is decisive of the matter is that there is evidence of actual conduct on the grievor's part - some use of the train radio, and the application of some braking - after the point at which it is said he may have

"blacked out". On all of the evidence, it simply cannot properly be concluded that the grievor had "blacked out" and so was not responsible for his actions. On the material before me, I find that the grievor committed a violation of the rules for which he was properly held responsible.

The rule violation, analogous to the contravention of a signal indication, is obviously of the most serious type. Whether or not there were as here, tragic results, the grievor would be subject to very severe discipline for such an offence.

It seems clear too that the grievor did not make proper use of the train radio. For this, too, he was subject to discipline. There is no need to elaborate on this aspect of the case, which is not in dispute.

As to the violation of Rule "G", it may be observed that the Company does not allege that such violation was a cause of the accident that occurred. It is nevertheless the case that there was a violation of that rule. The grievor did, admittedly, consume several beers during the period while he was waiting for his call. The grievor was not actually on duty at that time, and there is no evidence that he did any drinking while actually on duty or after accepting his call. He fully expected to be called, however, and was in frequent contact with the Assistant Terminal Supervisor during the evening to see how he stood. He had not booked rest, and was awaiting a call. In these circumstances, it is my view that the grievor was "subject to duty" at the material time, and that he consumed intoxicants at such time. This is, especially in the case of an engineman, a very serious offence.

The grievor was, as I find, guilty of each of the three charges made against him in the notice of discharge. Each of these - most especially the signal violation and the violation of Rule "G" - was a most serious offence. When the group of offences is considered as a whole, it must be said that there was just cause for discharge. Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR