

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 797

Heard at Montreal, Tuesday, December 9, 1980

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

EXPARTE

DISPUTE:

Assessment of 30 demerit marks to Conductor S. Wasylenko for violation of Rule 42, U.C.O.R.

EMPLOYEE'S STATEMENT OF ISSUE:

On July 20, 1979, Train Order Form "Y" . Example 2 in accordance with Rule 42, U.C.O.R. was in effect from 0400 to 1330 between mileage 60 and mileage 70, Koshabowie Subdivision.

An investigation was held on November 1, 1979 to determine if Conductor Wasylenko was in violation of Rule 42, U.C.O.R. and he was assessed 30 demerit marks.

The Union requested the Company to expunge the demerit marks from his record.

The Company has declined the Union's request.

FOR THE EMPLOYEE:

(SGD.) L. H. MANCHESTER
GENERAL CHAIRMAN

There appeared on behalf of the Company:

H. J. Koberinski	-	Labour Relations Assistant, CNR, Montreal
D. D. Brown	-	Witness, CNR, Sioux Lookout, Ont.
W. J. Rupert	-	System Manager - Rules, CNR, Montreal
J. A. Cameron	-	Regional Labour Relations Officer, CNR, Winnipeg
P. L. Ross	-	Coordinator Transportation - Special Projects, CNR, Mt
D. F. Doig	-	Assistant Superintendent, CNR, Thunder Bay, Ont.
L. M. Tonn	-	Trainmaster, CNR, Thunder Bay, Ont.

And on behalf of the Brotherhood:

L. H. Manchester - General Chairman, U.T.U.(T) - Winnipeg

AWARD OF THE ARBITRATOR

At the material time the grievor and his crew were en route from Neebing to Atikokan in straightaway service. They were in possession of a set of train orders governing the movement of their train, and among these orders was Order No. 735, being an order in form "Y" for protection of track work. In the case of a westbound movement such as the grievors', the order required that between 0400 and 1300 hours the train approach the red signal at mileage 60 prepared to stop, and that it not pass the signal until instructions were received from foreman Brown. Foreman Brown was in charge of a track crew working in the area protected by the train order.

There is no doubt as to the vital importance of compliance with orders such as these. It is the Union's position that the order was complied with.

Foreman Brown, knowing that the grievor's train would have to clear the work limits before he could begin work, stayed in the clear waiting for the train. His evidence is that shortly after 0400 he noticed that the train had entered the Form "Y" limits. There had been no permission sought or given. If the train had entered the limits before 0400, then it would not have been necessary for permission to have been given. The protected limits appear to have extended over some ten miles, and if there was any doubt as to whether or not the order was in effect (that is, as to whether or not it was 0400 or after), the safe course - obviously - was to consider the order as in effect and contact the track crew foreman.

Seeing the train within the work limits, Foreman Brown called the grievor asking why he had not been contacted or permission sought. The grievor replied that his engine had been into the limits before 0400. That was also his evidence at the investigation. Other evidence is to the contrary. The dispatching office Pengraph records the arrival of the train at mileage 59.5 (east switch at Annex), 0359, and at mileage 60.9 (west switch at Annex) at 0403. From this, it would appear that the train must have entered the Form "Y" limits at 0400 or indeed later. While it has not been shown that the times recorded on the Pengraph are shown with absolute accuracy, the same is true as to the grievor's own observations as to the time. In any event, the grievor and his crew understood that if they were within the limits when the order came into effect, they must stop and not proceed until instructions had been received from the foreman.

From all of the material before me, I find that this was a case in which the train order was in effect, and in which the crew required the instructions of foreman Brown before proceeding. It is the Union's contention that such instructions were given. Indeed, it is claimed that the instructions were received before 0400. This, it is said, was in conversation with foreman Brown, who is said to have advised that the men and machinery were clear of the right-of-way track. In his statement, the grievor says that "Prior to 0400 Foreman Brown said that men and machinery were clear of the

right-of-way".

Now I would agree with Mr. Manchester for the Union that a statement that "men and machinery are clear of the right-of-way" could, in appropriate circumstances, be taken as permission to proceed. It would not be necessary for any particular precise verbal formulation to be required, although an "OK to proceed" or the like might be better. Had the grievor called up the foreman before entering the limits, and received such a reply to his request or enquiry, then he would, I think, have been justified in considering he had authority to proceed. It might have been a better practice for him to verify this in more precise terms, but certainly he would not have committed an infraction justifying thirty demerits.

That is not, I find, what happened in this case. The grievor did not call up the foreman and did not receive permission to proceed. When the foreman stated, as he did, that men and machinery were clear of the right-of-way, that was done in the course of a call he made to the train crew seeking an explanation of their unauthorized presence and advising them, in the course of what appear to have been some understandably heated remarks, that it was lucky for them (to say nothing of the track crew) that the men and machinery were clear. That might indicate that the train might as well continue on, but it did not amount to a permission to enter the limits, as it was already too late for that.

From all of the material before me, it is clear that the grievor himself took no positive action to comply with the requirements of the Uniform Code of Operating Rules on the train order. He was already within the work limits when he heard the foreman say (among other things) that the track was clear. I find, from the material before me, that this occurred after 0400. In any event, of course, it should have been clear to the grievor that he was about to enter a work area at a time so close to the beginning of work that the only safe course was to enquire of the foreman before entering the area.

For the foregoing reasons, it is my conclusion that there was just cause for the discipline imposed. The grievance is therefore dismissed.

J. F. W. WEATHERILL
ARBITRATOR