

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 822

Heard at Montreal, Tuesday, April 14, 1981

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Discipline assessed Dispatcher J.A. Webb for the alleged violation of Rule 206, Paragraph 8 and Rule 205, Paragraph 1 of the U.C.O.R.

JOINT STATEMENT OF ISSUE:

Mr. J.A. Webb was assessed thirty (30) demerits for violation of Rule 206, Paragraph 8 and Rule 205, Paragraph 1 of the U.C.O.R.

The Brotherhood has appealed that the discipline was unwarranted, unfair and discriminating.

The Company has refused to remove the discipline.

FOR THE EMPLOYEES:

(SGD.) D.C. DUQUETTE
GENERAL CHAIRMAN (RAIL)

FOR THE COMPANY:

(SGD.) J.B. CHABOT
GENERAL MANAGER,
OPERATION &
MAINTENANCE

There appeared on behalf of the Company:

J. Cuin	-- Supervisor, Labour Relations, CP Rail, Montreal
S.J. Samosinski	-- Labour Relations Officer, CP Rail, Montreal
F. Beaudoin	-- Asst. Superintendent Transportation, CP Rail, Montreal
F. Slattery	-- Chief Dispatcher, CP Rail, Saint John
J.H. Blotsky	-- Asst. Supervisor, Labour Relations, CP Rail, Montreal

And on behalf of the Brotherhood:

D.C. Duquette	-- General Chairman, BRAC, Montreal
J.A. Webb	-- Local Chairman, BRAC, Saint John
G.D. Marson	-- Local Representative, BRAC, Brownville, Maine

AWARD OF THE ARBITRATOR

The grievor, who entered the Company's service as an Operator in 1942, was working at the material time as a Train Dispatcher at Saint John. He was responsible for the safe and proper operation of all trains on the D.A.R. Division, including the Truro Subdivision. His primary duty was to arrange for the safe and orderly movement of trains on his territory through the issuance of train orders, in accordance with the prescribed forms under the Uniform Code of Operating Rules. Train orders confer right (Rule 71) and are issued by authority of the Superintendent or the designated Train Dispatcher (Rule 201); the importance of proper procedures for the safety of operations cannot be exaggerated.

Before the time in question, Train Order No. 857 had established a speed limit of 20 miles per hour between mileage 6.8 and mileage 11.2 on the Truro Subdivision. On May 30, 1980, the Section Foreman of the Maintenance of Way force working the Truro Subdivision contacted Mr. E.A. Hunt, the Agent/Operator at Windsor, requesting that the limit on that portion of the track be reduced to 10 miles per hour, because of defective rails. This required, obviously, a Train Order significantly different with respect to that trackage.

Agent/Operator Hunt advised the grievor by telephone of the requested change. The grievor then authorized Agent/Operator Hunt to issue a new Train Order, No. 894, setting out the new speed restriction. Agent/Operator Hunt prepared the new Train Order, but it showed the speed restrict as 20 miles per hour, rather than as 10 miles per hour. Agent/Operator Hunt was disciplined for this error, and assessed fifteen demerits. He had not complied with the requirements of Rule 209 of the Uniform Code.

Rule 206, paragraph 8, of the Uniform Code is as follows:

"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."

At the investigation of this matter, the grievor admitted that he did not transmit the order, and write it as he transmitted it, in accordance with this rule.

Rule 205, paragraph 1, of the Uniform Code is as follows:

"Each train order must be written in full in a book provided for the purpose in the office of the train dispatcher; and with it recorded the signals and responses transmitted, the offices from which the order is repeated and the time, the names of those who sign for the order, the times at which the order is made complete, and the train dispatcher's initials. These records must

be made at once and never from memory or memoranda." Here too, the grievor admitted that he did not transmit or record the appropriate signals in connection with the Train Order. It would appear that he recorded a signal and response, even though none was in fact transmitted. The recording of the telephone conversation, it seems, records Agent/Operator Hunt as having repeated "20 miles per hour" as the speed restriction. This error on Mr. Hunt's part was not recognized by the grievor, who stated at his investigation that notwithstanding what was recorded on the tape, he heard 10 miles per hour as the speed restriction. Whatever might be thought of a certain laxness with respect to the "formal" aspects of the Rules (designed to reduce the risk of such errors), the unavoidable conclusion appears to be that the grievor was not paying sufficient attention to the essential substance of the Train Order, that is the speed limit over the area of defective rails. Such an error may well be compared to failure to obey a signal indication. It might well have been avoided by following the procedures prescribed by the Uniform Code of Operating Rules. That the grievor was in violation of the Code is acknowledged.

By way of explanation, the grievor alleges that he was following "standard operating procedures" for the renewal or changing of train orders. He stated that where train orders relating to track or other conditions are to be renewed or are to have "minimal changes", it is standard operating procedure, condoned by the Company, to tell experienced operators the new number, date and changes, and to write it up and repeat it later.

It would appear from the material before me that sloppy practice of this sort may have been condoned by the Company in some instances. It was the evidence of the Chief Dispatcher at Saint John, however, that such a practice was not known or condoned with respect to changes in the body of a train order. In the instant case there was a change in the body of a train order which was more than a "minimal" change. Whatever may have been the case in other situations, the failure to follow the rules in the instant case was a serious matter, and was wrong.

In my view, there can be no doubt that the grievor was subject to discipline. The Union does not contest the extent of the penalty imposed. I do not, therefore, deal with that matter, to which laxity in the enforcement of these rules would be pertinent. In itself, the offence was a serious one in any event.

For the foregoing reasons, the grievance is dismissed.

J.F.W. Weatherill,
Arbitrator.