

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 833

Heard at Montreal, Tuesday, May 12, 1981.

Concerning

ONTARIO NORTHLAND RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Discipline assessed Bus Operator J. Hebert, effective October 20, 1980, resulting in his subsequent dismissal for the accumulation of more than 60 demerit marks.

JOINT STATEMENT OF ISSUE:

Effective October 20, 1980, Bus Operator Hebert was assessed 10 demerit marks for:

"An accident involving O.N.T.C. Bus 135, while in your care and control, and Gray Coach Bus 2248, at the North Bay Bus Terminal 80-10-03".

He was also assessed 10 demerit marks for:

"Violation of Rule G25 of the Bus Operators' rules and regulations, while operating an extra section on trip 4 from Kapuskasing to North Bay 80-10-13, causing inconvenience and anxiety to a number of passengers in Smooth Rock Falls, and creating additional expense to the company to operate said trip".

The 20 demerit marks when added to the 50 demerit marks already on his record gave Mr. Hebert a total of 70 demerit marks.

The Union appealed the discipline in the first instance, that Mr. Hebert should not have been assessed 10 demerit marks because he was not responsible for the accident.

In the second instance, that all the evidence and facts were not brought out at the investigation in accordance with the Collective Agreement, resulting in the unjust discipline of 10 demerit marks assessed Mr. Hebert, *who performed his required duties in a responsible manner, also the Union contends the company has not followed the proper procedure *in both instances.

The Union requests that the demerit marks in both instances be withdrawn and that Mr. Hebert be reinstated with full seniority rights and compensated for all lost time.

The company denied the request.

FOR THE EMPLOYEES:

FOR THE COMPANY:

(SGD.) B.F. NEWMAN
GENERAL CHAIRMAN

(SGD.) R.O. BEATTY
GENERAL MANAGER

* Note - The company does not agree with the underlined portions of the above statement.

There appeared on behalf of the Company:

A. Rotondo -- Manager Labour Relations, ONR, North Bay
J.H. Singleton -- Manager Passenger Services, ONR, North Bay
G.H. Edwards -- Superintendent Bus Operations, ONR, North Bay
and on behalf of the Brotherhood:

J.H. Sandie -- Vice-President, UTU, Sault Ste. Marie
E. Fulford -- Local Chairman, UTU, North Bay

AWARD OF THE ARBITRATOR

As appears from the Joint Statement, there are two distinct occasions of discipline to be considered in this case. I will deal with these in turn.

On October 3, 1980, the grievor, a Bus Operator, was involved in an accident in which the bus the grievor was driving collided with another bus, which was stationary. The grievor's bus had been parked, parallel to other buses, at a loading bay at the North Bay terminal. His passengers had boarded, and the grievor then prepared to leave North Bay en route to Kirkland Lake. He made a back-up movement, guided by Mr. Grassi, the Terminal Agent, acting as flagman. Another bus was parked at an angle behind two adjoining bays, to the left of the grievor's vehicle. A third bus (there were others in the area but had no relation to these movements), was parked well behind the grievor's vehicle, at a right angle to it.

The grievor, following Mr. Grassi's signals, backed up so that the rear of his vehicle passed the rear of the adjoining vehicle (parked at an angle) and turned slightly to the left, so that on a forward movement, turning right (although the manoeuvre might have to be done in two stages), he could clear the buses and loading bays on his right and leave the terminal. The grievor did not back up as far as Mr. Grassi (who was on the spot) indicated he should. As the grievor stated, being then approximately 18 inches from the adjoining bus (that is, the rear portion of his vehicle), "Although Mr. Grassi motioned for more backward movement I stopped, prepared to move forward to gain a better position to turn".

The grievor then placed his bus in forward gear. He states that as he did so his foot slipped on the clutch so that the vehicle lurched forward. There is no reason to disbelieve the grievor. Certainly a driver's foot will occasionally slip, although the material before me did not reveal anything which I would consider unusual with respect to grievor's boot, the clutch footplate, or the clutch mechanism. Still, the grievor's foot might slip, and I accept that it did, as he says.

That is not enough to explain the accident. The collision (not a particularly serious one) occurred not because the vehicle moved forward, but because it moved forward while turning hard right, and there not being sufficient clearance of the adjoining vehicle to accommodate the swing of the rear end of the grievor's vehicle when it made the turn. The accident could have been avoided by more care on the grievor's part, and in particular by his accepting the directions of the flagman.

This was, I think, an incident of carelessness for which some discipline might be imposed, although it would not in itself attract a heavy penalty.

The second incident to be considered occurred on October 10, 1980. On that day the grievor was the driver of an extra coach operating on a regular schedule on trip 4 from Kapuskasing to North Bay. The regular bus was to pick up passengers for local destinations, and the extra coach was to pick up passengers for North Bay and beyond until full and then proceed directly to North Bay. The stops en route from Kapuskasing to North Bay were at Moonbeam, Smooth Rock Falls, and Cochrane.

The regular bus had stopped at the appropriate stops, and had proceeded to Cochrane. When the grievor, following shortly after the regular bus, arrived at Cochrane, it was found that he had not in fact gone in to Smooth Rock Falls where there were passengers waiting, who had been told by the regular driver, on departure, that the regular bus would be along in a few minutes.

Proceeding en route to Cochrane, the grievor had seen the regular bus emerge from the road to Smooth Rock Falls, and did not go in to that town. The regular driver proceeded ahead of the grievor to Cochrane and did not signal to him that anything was amiss. It was only in Cochrane that the regular driver advised the grievor that there were passengers waiting in Smooth Rock Falls. The grievor then returned to that point, a distance of some 58 kilometres, to pick up the passengers.

Rule G25 of the Drivers' Operating Manual, known to the grievor, is as follows:

"Extra Coaches

Drivers in charge of extra coaches on regular schedules are required to make stops at each and every station enroute for the purpose of picking up passengers, whether preceding or following the regular coach unless specifically ordered to do otherwise by the dispatcher or unless there is a definite understanding to the contrary between the drivers in charge of the regular coach and the driver in charge of the extra coach."

Clearly, the grievor did not make the stops "at each and every station en route" for the run in question. He was not specifically ordered to do otherwise by the dispatcher. Nor, as I find, was there any "definite understanding to the contrary" between the driver of the regular coach and the grievor. The grievor, in his statement, said that the regular driver, who "mumbled", had said "pick up North Bay people and I'll see you in Cochrane". Again, there is no reason not to believe the grievor's statement. It does not, however, reveal any "definite understanding" that the grievor was to proceed directly to Cochrane, and there was no reasonable justification for his not going in to Smooth Rock Falls to pick up any passengers who might be there - as in fact there were.

On this second occasion, then, it is my view that the grievor was in clear violation of the rules, and that he was subject to discipline.

The Union presented certain evidence to show that, at least at an earlier time, relations between the Company and its employees had not been good. The evidence also suggests that such relations have since improved. As to the investigation of the matter, there appears to me to have been no violation of the provisions of the Collective Agreement. The driver of the regular bus does not appear to have committed any offence, and need not have been called to an investigation. There is no real question of improper discrimination in this case.

In the two instances described, the grievor was guilty of improper conduct, and was subject to discipline. Whether or not ten demerits was appropriate in each case (and I think it was surely appropriate in the second) the assessment of at least ten demerits was appropriate in the light of these two instances. The grievor had a substantial record of discipline, and in a number of cases had simply been reprimanded without having demerits assessed: it cannot properly be said that the Company was out to "get" him.

The grievor thus having accumulated at least sixty demerits, his discharge was, as I find, justified, and the grievance must be dismissed.

J.F.W. Weatherill,
Arbitrator.