

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 877

Heard at Montreal, Thursday, October 15, 1981

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Discipline assessed Yard Foreman G. H. Dunn, Windsor, Ontario.

JOINT STATEMENT OF ISSUE:

On September 15, 1980, Yard Foreman G. H. Dunn, while working with a reduced yard crew at Windsor Yard, CP Rail, was instructed by Assistant Superintendent Dixon to perform the loading of the barges in a different manner. Mr. Dunn advised he was following his usual switching movements for a safe operation, as per Article 42, Rule 8, Clause (e) of the Collective Agreement and would continue to do so. He was removed from service and, following an investigation, during which he lost time, he received discipline of 30 demerit marks.

The Union requested the removal of the 30 demerit marks from Yard Foreman Dunn's record and payment for time lost.

The Company refused, contending the discipline was proper and justified.

FOR THE EMPLOYEES:

(SGD.) LEO H. BREEN  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) L. A. CLARKE,  
for J.P. KELSALL  
GENERAL MANAGER  
OPERATION & MAINTENANCE

There appeared on behalf of the Company:

L. A. Clarke	- Supervisor, Labour Relations, CP Rail, Toronto
B. P. Scott	- Labour Relations Officer, CP Rail, Montreal
B. F. Dixon	- Assistant Superintendent, CP Rail, Windsor, Ontario

And on behalf of the Employees:

Leo H. Breen, General Chairman, - Eastern & Atlantic Regions,  
Toronto  
B. Marcolini, Vice-General Chairman, Eastern & Atlantic Regions,  
J. Austin, Secretary, Eastern & Atlantic Regions.

#### AWARD OF THE ARBITRATOR

The grievor's work involved loading railway cars on a barge. The barge to be loaded had four tracks, which tied into four tracks on the dock, which four tracks in turn switched into one track leading to the area of the yard where cars are assembled for loading. A barge holds twenty to twenty-four cars. The distance from the dock to the yard is approximately two miles.

In most cases, the whole load of cars to be put on a barge is brought from the yard to the dock at one time, in order to be loaded on the barge in the appropriate order. It would seem that where a three-man crew is used, there is no difficulty with respect to the passing of visual signals to control the movement of the cars from the yard to the dock. Where a reduced crew is used, however, the movement from the yard to the dock cannot at all times be controlled by visual signals. In such cases (and the same may be true with a regular crew as well), radio communication is used. The use of radio communications is not unsafe and is permitted by the Uniform Code of Operating Rules.

In the instant case the grievor was in charge of a reduced crew. While there is no question as to actual loading of cars on the barge, the grievor did refuse to bring down the complete string of cars from the yard to the ship dock at one time. Rather, he brought down ten or twelve cars, loaded them, and then returned to the yard for the remaining cars. This was an inefficient and time-consuming process, and resulted in the company's losing the chance to load two light boats to Detroit.

Although directed to bring down the entire string of cars at one time, the grievor refused to do so, citing the number of cars, and indicating his view that such a movement was not safe with a reduced crew. The union contends that the grievor was entitled to take this position by virtue of Article 42, Rule 8, Clause (e) of the Collective Agreement. That Article is as follows:

"When a yard or transfer crew consists of a foreman and one helper, the yard foreman will use his discretion as to the number of cars which can be handled safely and efficiently."

Certainly, under this provision, the grievor would have a discretion to exercise. Where authority is given to exercise a discretion, however, it is implicit that such discretion be exercised in an appropriate fashion, and not arbitrarily. In the instant case, the grievor's decision, which was contrary to the usual practice, and which had no serious basis in considerations of safety, was clearly arbitrary, and an abuse of the discretion conferred on him. Control of the movement by radio signals was proper, and if such signals were to fail, the Uniform Code of Operating Rules makes provision for the proper course to be followed. The grievor was directed to follow an obviously proper course, and in refusing to do so, but in improperly relying, on an arbitrary application of his discretion, the grievor committed a serious offence, for which he was subject to discipline.

In my view, discipline was properly imposed in the circumstances, and

the grievance must therefore be dismissed.

J. F. W. WEATHERILL,  
ARBITRATOR.