

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 993

Heard at Montreal, Wednesday, October 13th, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed the record of Conductor K. J. Smith, Hornepayne, Ontario, May 16, 1980.

JOINT STATEMENT OF ISSUE:

During his tour of duty on May 16, 1980 as Conductor on Extra 1397 East, Mr. K. J. Smith was charged with a violation of U.C.O.R. 104B at the east-end of Nakina Yard.

Following an investigation, Conductor Smith was assessed 15 demerit marks for violation of U.C.O.R. 104B.

As a result of the assessment of 15 demerit marks, Conductor Smith was discharged for accumulation of demerit marks.

The Union appealed the assessment of 15 demerit marks and the resultant dismissal.

The Company declined the appeal.

FOR THE EMPLOYEES:

(SGD.) R. A. BENNETT
General Chairman

FOR THE COMPANY:

(SGD.) G. E. MORGAN
Director Labour Relations

There appeared on behalf of the Company:

H. J. Koberinski	- System Labour Relations Officer, CNR, Montreal
M. Delgreco	- Regional Labour Relations Officer, CNR, Toronto
J. Sebesta	- Coordinator Transportation - Special Projects, CNR, Montreal
J. Letwin	- Transportation Control Officer, CNR, Montreal

And on behalf of the Union:

R. A. Bennett	- General Chairman, UTU, Toronto
R. J. Proulx	- General Chairman, UTU, Quebec
J. M. Hone	- Vice General Chairman, UTU, Ottawa

AWARD OF THE ARBITRATOR

On the day in question the grievor was Conductor of Extra 1297 East. His assignment was to work with rail grinding equipment east of Nakina on the Caramat Subdivision. After receiving his train orders the grievor had his train moved to the east end of Nakina Yard. He then noted that another eastbound train, No. 374, had arrived at Nakina. He contacted the Conductor of that train, and enquired as to the amount of work it had at Nakina, and if there were time for the grievor's train to work ahead of it. It was agreed that there was time, and the two Conductors then requested from the Dispatcher joint authority to use the main track between Signal 1217 Nakina and Signal 1227 Poilu, and to use the dual control switches at Nakina East in hand position. This authority was given and properly repeated. It would permit the rail grinding equipment to leave the yard first, while No. 374 performed switching at the east end of the Yard. It was agreed between the Conductors that the route would be lined from the yard to the main track at the east end of the yard.

There is a dual (power/manual) controlled switch at the east end of the yard, and, a short distance further, a dual control switch to the Pagwa Subdivision. The two trains would go over both switches to perform the operations in question.

Rule 104B is as follows:

"104B. DUAL CONTROL SWITCHES - When a train or engine is stopped by a signal governing movement over a dual control switch, if no conflicting movement is evident, a member of the crew must immediately communicate with the train dispatcher and be governed by his instructions. Such instructions must include information as to the route to be used. The instructions must be in writing and repeated to ensure correct understanding.

When a train or engine is required to move over a dual control switch under a Stop indication, movement must not be made until after selector lever has been taken out of "power" position and placed in "hand" position. Hand throw lever must be operated until switch points are seen to move with the movement of hand throw lever. Switch must then be lined for the route to be used. Selector lever may be restored to "power" position and locked as soon as leading wheels have moved onto the switch points.

When switching is to be done over a dual control switch, the switch may be operated manually by a member of the crew after authority to do so and work and time limits have been obtained from the train dispatcher as prescribed by Rule 266. Selector lever must then be placed in "hand" position and hand throw lever operated until switch points are seen to move with the movement of the hand throw lever. Selector lever must be left in "hand" position until switching movements have been completed.

When selector lever is placed in "hand" position, all signals governing movements over the switch will display STOP indication and the train or engine granted work and time limits may consider the indication of such signals suspended, and movements may be made on hand signals until switching completed and selector lever is restored to "power" position and locked. Train dispatcher must be notified when switching completed and selector lever has been restored to "power" position and locked."

Both switches are, it appears, governed by the same signal. Having given the Rule 266 authorization, the Dispatcher was required to "block all levers controlling signals governing movements into such limits at Stop". The switches were then to be taken off power and operated manually. The grievor instructed his rear-end Brakeman to line the yard switches and to take the dual control switch at Nakina East off power and line it by hand. He did not give any instruction with respect to the other dual control switch over which the movements were to pass, that to the Pagwa Subdivision. The rear-end Brakeman did not do anything about the Pagwa Subdivision switch. The grievor watched him work, and was aware of this. The grievor's train then moved out of the yard and onto the main line, passing over both switches. Subsequently, No. 374 moved out of the yard and over both switches in connection with switching movements.

Both Locomotive Engineers stated that they had been told the "switches" were off power. The Engineer of the rail grinding train seems not to have realized that the Pagwa Subdivision switch was still on power when he went over it eastbound. Train No. 374 then moved out over the switches, and backed in again to the yard. That Conductor also did not realize that the Pagwa Subdivision switch was still on power. Then the Dispatcher called the grievor to enquire if both switches had been taken off power. When advised that they hadn't, he directed that no move be made over either until both were on manual control. The rail grinding equipment was then returning to the yard, and on reaching the Pagwa switch the Engineman placed it in the hand throw position.

All those responsible (Conductors, Enginemen and Dispatcher-I leave to one side the Brakeman who was following the grievor's instructions) realized that it was necessary to put both switches under manual control. They were covered by the same signal and had been blocked. Not to take them off power and manually secure them for the moves to be made was to run a risk of the switch points moving, and thus of potential derailment: it must be known, for each movement, that the switch is secured. In this case, the Enginemen of both trains and the Conductor of No. 374 had understood, or at least assumed that the grievor would ensure the switches were secure. They themselves were in violation of the rule in this respect, as they acknowledged.

It is not sufficient for the grievor to say that he thought the Rule 266 authorization referred only to a dual control "switch" rather than "switches". The particular written authority is not before me, although some of those involved stated that the reference, at least in the radio messages relating to the move, referred to "switches".

Even assuming that only the word "switch" was used, the grievor, if confused, ought to have sought clarification of the matter. He ought not even to have been confused, as he was familiar with the territory and if careful in his work could not have failed to realize that in going over the Pagwa Subdivision switch, just as in making a move over the Nakina East switch, he would be making a move " over a dual control switch under a Stop indication". Rule 104B is very clear as to what must be done in such a case: the switch must be placed in the manual position and then lined. Having complied with respect to the Nikina East switch, there was no reason not to comply as well with the nearby Pagwa Switch, to which it ought to have been clear the rule equally applied.

There was, in my view, no excuse for this violation of the Uniform Code of Operating Rules. Such rules are of obvious importance for the safety and efficiency of operations, and a breach of that sort will be just cause for discipline. In my view, the assessment of 15 demerits was not excessive.

It was argued that because the grievor had a bad record, standing at 50 demerits, something other than the imposition of demerits (which would subject him to discharge), should be considered. While some of the demerits on the grievor's record were due to attendance or misconduct offences, others involved rule violations, and it may be noted that in two cases these were associated with derailments. There were in my view, no special considerations that would require the Company to treat the rule violation in this case less seriously than it would otherwise do. The grievor has thus accumulated more than 60 demerits, and is subject to discharge.

For all of the foregoing reasons, the grievance is dismissed

J. F. W. WEATHERILL,
ARBITRATOR.