

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 994

Heard at Montreal, Wednesday, October 13th, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed Trainman B. J. Zettler, Hornepayne, Ontario, March 11, 1981.

JOINT STATEMENT OF ISSUE:

On February 3, 1981, Trainman Zettler was employed as head-end Brakeman on Extra 9503 West at Hornepayne. After leaving the shop track diesel units 9503-9509, accompanied by Brakeman Zettler, proceeded to the west-end of the yard. When backing into track RDW1 the movement entered a cross over and collided with a train yarding in track RDE2.

Following an investigation, Trainman Zettler was assessed 20 demerit marks for:

"failure to properly control movement and violation of Uniform Code of Operating Rules, Rule 104 paragraph 6, resulting in side collision".

As a result, Trainman Zettler was discharged for accumulation of demerit marks.

The Union appealed the assessment of 20 demerit marks and the resultant discharge.

The Company declined the appeal.

FOR THE EMPLOYEES:

FOR THE COMPANY:

(SGD.) R. A. BENNETT
General Chairman

(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

The grievor properly lined and signalled the movement of the units of his train from the switching lead on to track RDW 1, west of the switch. He then lined the switch for the Eastward back-up movement on RDW 1, to pick up the train. After lining the switch and giving the back-up signal, the grievor entrained on the leading unit, as it was still moving slowly. Then he saw that the switch at the crossover was not lined for movement on RDW 1, but for the crossover to RDE2. He immediately gave a stop signal which was apparently not seen, since the units entered the crossover. The grievor then "bailed out", continuing to give a stop signal. By this time, whether because of the signals or because of the nature of the movement, the engineman recognized the danger and attempted to stop the train. It was then too late, and the movement continued on the crossover to RDE 2 where it collided with Train No. 214, which was moving along RDE 2, parallel to RDW 1.

Quite clearly, the grievor was in violation of paragraph 6 of Rule 104. That paragraph is as follows:

"A train or engine must not foul a track until switches connected with the movement are properly lined, or in the case of automatic or spring switches the conflicting route is seen or known to be clear."

The grievor would be subject to discipline for this offence, whether or not any accident occurred as a result. It was argued on the grievor's behalf that the grievor was not the sole cause of the accident. That is certainly true: whoever left the crossover switch lined for the crossover rather than for RDW 1 would be among those responsible, as, it would seem, would be the engineman, if he was not observing signal indications, or if he was travelling too fast. But those considerations do not alter the fact that the grievor did not properly line the route, or know it to be clear. The facts that others committed other offences, or that an accident occurred, do not affect the grievor's responsibility for the rule violation which he committed.

Having regard to the circumstances in which the offence was committed, I think the assessment of twenty demerits was not excessive. It was, it seems, a snowy night, and there was a parallel train movement. For the short distance between the two switches (some 200 feet), the grievor should surely have been giving slow back-up signals, so the movement could be fully controlled. A lesser penalty would have been lenient, and even ten demerits would have had the same effect with respect to the grievor's employment.

The grievor's record shows that discipline has been imposed for

various offences, many related to attendance. Prior to the incident in question, he had accumulated 50 demerits. The material before me does not set out any circumstances which would prevent the normal application of the demerit system in this case. There was just cause for the discipline imposed, and for the discharge of the grievor.

Accordingly, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.