

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1031

Heard at Montreal, Tuesday, January 11th, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed the record of Conductor N. E. Cubitt, Hamilton, Ontario, October 14, 1981.

JOINT STATEMENT OF ISSUE:

On October 14, 1981, Mr. N. E. Cubitt was the Conductor on Train 251 operating from MacMillan Yard to Hamilton. Train 251 passed a stop indication displayed by Signal 493S, Burlington West, Halton Subdivision, in violation of Rule 292, Uniform Code of Operating Rules.

Following an investigation, Conductor Cubitt was assessed 25 demerit marks for failure to comply with the requirements of Rule 106 and Rule 517, Uniform Code of Operating Rules and Item 11, Section 17.1, General Operating Instructions Form 696.

The Union appealed the assessment of 25 demerit marks on the basis that it was not warranted and if it was warranted it should have been of a far lesser amount.

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	- Manager Labour Relations, CNR, Montreal
M. Delgreco	- Senior Manager Labour Relations, CNR, Montreal
W. H. McLeish	- Manager Labour Relations, CNR, Toronto
J. A. Sebesta	- Coordinator, Transportation Special Projects, CNR, Montreal
A. D. Martin	- Trainmaster, CNR, Oakville
W. J. Rupert	- System Manager - Rules, CNR, Montreal

And on behalf of the Union:

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

T. G. Hodges                      - Secretary, UTU, Toronto

AWARD OF THE ARBITRATOR

At the material times the grievor, together with the rear-end brakeman, was riding at the rear of the train. He could not see the front end of the train, nor the signal indications as the train approached them. It would appear that he did request, and receive, certain signal indications and that he received responses to calls respecting slow orders. Signal 477 S displayed an approach signal, and it was recognized by the members of the front-end crew that this meant the brakes would have to be applied and speed reduced, so that the train could stop at the next signal indication, if the signal so required. While the material before me does not make clear whether or not there was any confirmation of this between the grievor and the front-end crew, it does appear that the grievor was aware of the situation of the train at the time.

In fact the student engineer who was operating the engine did not reduce speed in sufficient time to allow the engine to stop before signal indication 493 S, which was red. The signal was observed, and the engineman at once took control and brought the train to an emergency stop, but not before passing the signal indication.

I do not consider, nor is it alleged, that the grievor was responsible for the violation of the signal indication. The train was slowing down, and the conductor would be justified in considering that it could be brought to a stop, if necessary, before the signal. When the train did go into emergency stop, however, it ought to have occurred to the grievor that a stop indication might have been violated. It was not appropriate for him to assume, as he says he did, that there had been a "kicker". It was, clearly, his duty to ascertain what had been the cause of the emergency stop, and then to carry out the procedures which the rules called for in the circumstances. The general responsibility of the conductor for the operation of trains is set out in U.C.O.R. Rule 106, and in my view the grievor did not meet that responsibility.

Rule 517 of the U.C.O.R. is as follows:

"517. If any part of a train or engine overruns a signal indicating STOP, front of train or engine must be protected immediately as prescribed by Rule 99 for OUTSIDE ABS TERRITORY, and member of crew must immediately communicate with train dispatcher and be governed by his instructions."

While the requirements of this rule were, to some extent, met, this was not because of any exercise of responsibility on the part of the grievor. The front-end brakeman did protect the front of the train. There was communication with the dispatcher, who came on the radio to the front end, indicating that the train was "close" to the signal. The grievor, who stated he was trying to contact the front end and the operator by radio, was unaware of this. It would appear that the front end crew did not advise the dispatcher that the train had

passed the signal. The grievor had gotten out of the caboose and was, it seems, walking toward the front end when the train made an unauthorized reverse movement, so that it would then be clear of the signal. It then waited for an approaching train to clear.

While the grievor may have had a problem with radio communication at that point (although the radio had worked until then, and was not reported as inoperative at the end of the trip), and while, if that were the case, the unauthorized reverse movement may have been beyond his control, it remains that he did not communicate with the dispatcher or seek his instructions, as he ought thereafter to have done.

The grievor was, I find, in violation of Rule 517, although that violation by itself would not, in these circumstances, have called for a particularly severe penalty.

Special Instructions Form 696, Item 17.1, paragraph 11, is as follows:

"When an express, freight or mixed train is stopped by an emergency application of the brakes, the cause should be determined if possible, brakes released and a pull-by inspection made for indication of sticking brakes and damaged equipment."

The grievor does not appear to have followed this instruction at all. Reliance on the inspection, such as it may have been, made by members of the crew of the train which subsequently passed is not an adequate substitute for the inspection called for by the instructions. There was, in my view, a violation of the spirit, as well as the letter of this rule.

In the circumstances, there is no doubt that the grievor was in violation of the rules as noted, and that he was subject to discipline therefore. The rules are vital ones for the conduct of safe operations, and the grievor's conduct in this case was very lax. In my view, there was just cause for the imposition of twenty-five demerits. It may be noted, however, that even were a somewhat lesser penalty (say of twenty demerits, which I would consider amply justified), assessed, it would not affect the outcome of the matter with respect to the grievor's employment, given his existing discipline record.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL,  
ARBITRATOR.