

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1080

Heard at Montreal, Tuesday, May 10, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Atlantic Region)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal against discipline assessed Locomotive Engineer S. Briere, Montreal, Quebec, for failure to comply with the provisions of Article 23 (a) (1) of the Collective Agreement thereby contributing to a delay to Extra Train 4705 North, on July 4, 1982.

JOINT STATEMENT OF ISSUE:

Following an investigation Locomotive Engineer S. Briere, Montreal, was issued Form 104 on which he was advised that his record had been assessed 20 demerit marks for "improper application of the rest rule resulting in undue delay to Extra 4705 North on July 4, 1982".

The Brotherhood contends that Mr. Briere acted in accordance with a long established practice of requesting relief rather than booking rest enroute in the Montreal area, Quebec Division, and in the absence of any advance warning that this past practice would no longer be tolerated the discipline imposed was unwarranted and excessive.

The Company contends that, inasmuch as Engineer Brier had not properly booked rest, his refusal to work beyond Adirondack Junction was improper. The Company further contends that the discipline assessed Engineer S. Briere was proper and justified in the circumstances.

FOR THE BROTHERHOOD:

(SGD.) K. H. BURNETT
General Chairman

FOR THE COMPANY:

(SGD..) J. B. CHABOT
General Manager
Operation and Maintenance

There appeared on behalf of the Company:

B. A. Demers - Supervisor, Labour Relations, CPR, Montreal
B. P. Scott - Labour Relations Officer, CPR, Montreal
M. M. Yorston - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

K. H. Burnett - General Chairman, BLE, Montreal

G. Wynn - Vice General Chairman, BLE, Montreal
J. P. Riccucci - Special Representative, BLE, Montreal

AWARD OF THE ARBITRATOR

The grievor was ordered in turnaround service between Montreal (St. Luc) and Farnham. He came on duty at St. Luc at 2315, and his train departed at 0345 on July 4, arriving at Farnham at 0440. He remained on duty, awaiting the arrival of the train he would take back to St. Luc as his return trip. That train arrived at Farnham at 0615, but due to the time required to yard it at Farnham the grievor and the train crew did not take it over until 0800. The train left Farnham for St. Luc at 0935.

At that time, the grievor had been on duty for ten hours and twenty minutes. A straight run from Farnham to St. Luc generally takes about forty-five minutes.

Shortly after his arrival at Farnham, that is, between 0630 and 0700, the grievor had told the Clerk at Farnham to tell the Train Dispatcher that he wanted to be relieved after eleven hours on duty. Later, after the grievor's train had left Farnham for St. Luc, the Train Dispatcher advised the Superintendent "that the crew wanted to be placed in a siding at 1015". It would appear from that that the grievor's request was taken as a request for rest. However that may be, the Superintendent asked that arrangements be made to line the route so that the grievor's train could have a straight run to St. Luc. This was done, and the grievor was then advised by the Operator, by train radio, that they had a straight run to St. Luc, and were to put the train on certain tracks.

To this the crew replied that they were not going to St. Luc, but would stop at Adirondack Junction and wanted to be relieved. The grievor stated that he "wanted to be replaced after my 11 hours of duty as called for in my Collective Agreement". The Operator then asked the crew if they were booking rest, and if so, for how long. The crew replied that they would advise how much rest they were booking when they were off duty at St. Luc. The grievor said that he would take rest only when he got to the locomotive shop but for the moment wanted to be relieved of his duties.

At about 1040 - 1050 the grievor's train arrived at Adirondack Junction on the main track addressing a clear signal. He stopped and held his train there, waiting to be relieved. The distance between Adirondack Junction and St. Luc is less than five miles.

The Deputy Yardmaster at St. Luc arranged for another assignment to leave their regular work and brought them by automobile to a point 0.7 miles from Adirondack Junction. The grievor pulled his train down to that point at the Yardmaster's request, and the crews changed. The grievor returned to St. Luc and went off duty at the shop track at 1255.

Article 23 (a) (1) of the Collective Agreement provides that engineers may book rest after being 11 hours or more on duty. In the instant case, the grievor had been 11 hours on duty at 1015, at which

time he was en route to St. Luc on a straight run. Had he sought to book rest, the grievor would have had to give one hours' notice. In the circumstances of this case, the expectations were that the grievor would have arrived at St. Luc and probably been off duty within that period.

In any event the grievor did not book rest, but clearly indicated he simply wished to be relieved. Nothing in the Collective Agreement gave him that right. The Union relies on what is said to have been a practice of providing enginemen with relief and transportation to the home terminal. With respect to an earlier incident the Company had advised the Union that steps had been taken to ensure that the proper application of the rest rule was understood. It was argued that it was unfair to the grievor not to have given him warning that this practice would not be followed. In fact, however, the grievor was rather pointedly asked if he were booking rest, and he very clearly said that he was not. He did not purport to rely on any past practice, but relied on his understanding of the Collective Agreement. He certainly knew that he was expected to take his train through to St. Luc, but stopped his train regardless. Assuming that the grievor had been entitled to book rest, he could have done so, and would then have been off duty. Where he is relieved, he remains on duty until returning to the shop track. To be relieved in these cases is obviously preferable to booking rest. Where there is no right to relief, however, an employee who behaves as the grievor does causes obvious delay to trains, increased expense to the Company in providing a relief crew, and improperly inflates his wage claim.

The grievor's action in the instant case was not supported by the Collective Agreement, and the grievor was not unfairly deprived of the benefit of any "past practice" (a clearly improper one, to the extent it may have existed) on which he was entitled to rely. He did cause delay to his train, and was properly subject to discipline. In my view, the assessment of 20 demerits was not excessive.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.