

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1086

Heard at Montreal, Tuesday, May 10, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On June 18, 1982, Mr. P. Lessard, Operator of MRT Tie Inserter, a Group 2 Machine, was reduced to a Group 3 Operator until December 31, 1983, for violation of Rule 69, second paragraph of Maintenance of Way Rules and Instructions at Mile 2.2, Victoria Sub-Division, on April 27, 1982.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. On April 27, 1982, Mr. Lessard had returned to work having been off work account back injury.
2. Mr. Lessard did not violate second paragraph of Rule 69.
3. Mr. Lessard be reinstated to Group 2 operator and compensated for any loss of earnings from April 27, 1982, onward.

The Company declines the Union's contention and denies payment.

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN
System Federation
General Chairman

FOR THE COMPANY:

(SGD.) L. A. HILL
General Manager
Operation and Maintenance

There appeared on behalf of the Company:

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| F. R. Shreenan | - Assistant Supervisor, Labour Relations, CPR,
Vancouver |
| R. A. Colquhoun | - Labour Relations Officer, CPR, Montreal |
| A. Nightingale | - Field Maintenance Supervisor, BC Area, CPR,
Vancouver |
| D. G. Dow | - Deputy Regional Engineer, CPR, Vancouver |

And on behalf of the Brotherhood:

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| H. J. Thiessen | - System Federation General Chairman, BMW, Ottawa |
| F. L. Stoppler | - Vice-President, BMW, Ottawa |

AWARD OF THE ARBITRATOR

Paragraph 2 of Rule 69 of the Maintenance of Way Rules and Instructions is as follows:

When approaching a switch or a railway, street or highway crossing, a car must be under full control prepared to stop quickly."

On the day in question the grievor was travelling from Victoria to Esquimalt, a distance of 2.9 miles, with an MRT Tie Insertter. He was accompanied by a Mobile Track Foreman, who flagged him over various crossings enroute.

The grievor inspected the car before leaving, and considered its braking system to be functioning properly. The brakes functioned properly, it would appear, while the machine was flagged across five public crossings, prior to approaching the one at Mile 2.14 (mistakenly referred to as Mile 2.2 in the Joint Statement).

The machine was equipped with two braking systems, a two-wheel hydraulic system installed by the manufacturer, and a four-wheel air brake system installed by the Company, to provide extra braking due to substantial grades on the Region. There was also a parking brake which applied to one wheel. In fact (although the grievor could not have known this), a suspension bolt was missing from the left rear brake shoe of the air brake system. This would apparently reduce the effectiveness of the air brake system by about 25%. It is to be remembered, however, that the air brake system itself was in addition to the hydraulic braking system with which the machine was equipped.

The grievor approached the crossing at Mile 2.14 at a speed which he estimated to be about 20 m.p.h. This was somewhat faster than the speed at which previous crossing had been approached. At about 200 feet from the crossing the Foreman signalled it to the grievor, who was apparently looking at the air and oil pressure gauges. The grievor then applied "full air brake". The Machine did not stop, and so the grievor decided to stop the vehicle by dragging the boom and jaws in the ballast. There was a concrete sidewalk before the crossing, and when the jaws struck that, the MRT derailed.

In my view, the grievor had not been keeping a proper lookout, and, suddenly realizing that he was approaching, reacted in panic when the machine did not at once respond to braking. There was sufficient braking force, if it were properly used. The grievor's conduct was careless, and he was subject to discipline on that account.

As to the penalty imposed, the circumstances which might support demotion as a form of discipline do not really obtain here. A penalty in the form of demerits would have been appropriate. An assessment of fifteen or twenty demerits would not have been excessive. Had that been done, however, the grievor would have been subject to discharge. Rather than impose that result, the Company reduced the grievor to Group 3 Machine Operator for a determined

period. In the particular circumstances of the instant case, that was an appropriate disciplinary measure, and was to the grievor's benefit, when the alternative is considered. The grievor's offence was a serious one, and involved the operation of rail equipment. There was just cause for the discipline imposed, and the grievance is accordingly dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.