

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1125

Heard in Montreal, Wednesday, July 6, 1983  
Concerning

CANADIAN NATIONAL RAILWAY COMPANY  
(CN Rail Division)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of dismissal of Baggage-man W. J. Hoy, Toronto, effective August 10, 1982.

JOINT STATEMENT OF ISSUE:

On August 10, 1982, Baggage-man Hoy was the Baggage-man on Train No. 82 when it was involved in a head-on collision with Extra 9629 West at Mileage 58.17 on the Dundas Subdivision.

Following an investigation, Baggage-man Hoy was dismissed from Company service for failure to comply with the requirements of Form R, Train Order No. 205, and violation of last paragraph, Rule 93 and Rule 106 of the Uniform Code of Operating Rules.

The Union appealed the discipline on the grounds Baggage-man Hoy did not violate all the quoted rules and that the discipline was too severe.

The Company declined the Union's appeal.

FOR THE UNION:

(SGD.) R. A. BENNETT  
General Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH  
Assistant Vice-President  
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. A. McLeish	- Manager, Labour Relations, CNR, Toronto
J. R. Church	- Superintendent, Western Ontario Division, CNR, London
J. A. Sebesta	- Co-Ordinator Transportation - Special Projects, CNR, Montreal
J. A. Allessandro	- Labour relations Officer, CNR, Toronto
Jas. R. Campbell	- Assistant Manager Rules Transportation, CNR, Mtl.

And on behalf of the Union:

R. A. Bennett        - General Chairman, UTU, Toronto  
M. J. Hone           - Vice General Chairman, UTU, Toronto  
T. G. Hodges        - Secretary, General Committee, UTU, Toronto

#### AWARD OF THE ARBITRATOR

There is no doubt that a very serious rule violation occurred in this case, and that its result was a head-on collision with another train. There is also no doubt that the grievor, as a member of the train crew, bears a responsibility for that violation, by virtue of Rule 106. The train did not comply with the requirements of a train order, nor did it travel at restricted speed in circumstances where that was required under Article 93. For that too, the grievor bears a responsibility.

That the grievor was subject to some discipline is clear. The substantial issue in this case is as to the extent of the discipline imposed on him.

The grievor, as Baggage man, would appear to have had the least authority of any member of the train crew, which consisted of a First and Second Engineer, a Conductor, a Brakeman and a Baggage man. The substantial error which led to the accident would seem to have been committed by the Enginemen who, it appears, did not understand the train order in question. They did not make a crossover at a point where the other members of the crew expected it, and as a result continued on the track, into an opposing movement which had been waiting for them to clear.

The other train crew members, including the grievor, had understood the order, and had become concerned. The grievor had, at the time of the accident, been dispatched to the front of the train to switch the crossover. He was aware of some deceleration, and seems at first to have thought that the order was being complied with. When he realized that was not the case, he considered that perhaps the order had been changed, only realizing that such was not the case when he observed the order board at Ingersoll as the train passed the station.

At that point, if not before, the grievor ought to have taken immediate action to stop the train. His failure to do so subjected him to discipline. The conductor, however, had been attempting to contact the head end, and the grievor was aware of the concern of others having more authority. That would, I think, explain some hesitation on his part. While the grievor was subject to severe discipline having regard to the seriousness of the matter, I do not consider, having regard to his seven years' service and clear record, that there was just cause for discharge in his case. In all of the circumstances, it is my view that the assessment of thirty demerits, together with a substantial period of suspension, would have been justified. It is accordingly my award that the grievor be reinstated in employment forthwith (subject to necessary qualifications), without loss of seniority, but with compensation for any loss of earnings only in respect of the period from and after March 1, 1983,

and that his record be assessed 30 demerits as of the date of his actual reinstatement.

J. F. W. WEATHERILL,  
ARBITRATOR.