

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1225

Heard at Montreal, Tuesday, April 10, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of discipline assessed Locomotive Engineer M. J. McAndrew,
Toronto, Ontario, 29 October 1982.

JOINT STATEMENT OF ISSUE:

On October 29, 1982, Mr. M. J. McAndrew was employed as Locomotive Engineer on "GO" Train 911, proceeding westward on the Oakville Subdivision to Oakville. Train 911 overran a Stop indication at Signal 203S.

An investigation was conducted and as a result, 10 demerit marks were assessed Mr. McAndrew's personal record for his failure to protect the front of Train 911 after overrunning a signal indicating Stop. Failing to protect Train 911 in the manner prescribed is a violation of Uniform Code of Operating Rule 517.

The Brotherhood appealed the discipline on the grounds that it was unwarranted.

The Company declined the appeal.

FOR THE BROTHERHOOD:

(SGD.) P. M. MANDZIAK
General Chairman

FOR THE COMPANY:

(SGD.) M. DELGRECO
FOR: Assistant
Vice-President,
Labour Relations.

There appeared on behalf of the Company:

| | |
|----------------|--|
| G. C. Blundell | - System Labour Relations Officer, CNR, Montreal |
| D. W. Coughlin | - Manager, Labour Relations, CNR, Montreal |
| J. A. Sebesta | - Co-ordinator Transportation - Special Projects, CNR, Montreal |
| J. R. Campbell | - Asst. Manager Rules, CNR, Montreal |
| J. H. Rousseau | - Trainmaster, CNR, Sarnia |

And on behalf of the Brotherhood:

P. M. Mandziak - General Chairman, BLE, St. Thomas

AWARD OF THE ARBITRATOR

The issue in this case is whether Engineer McAndrew was in breach of UCOR 517 when he failed to protect his train when he overran a Stop indication at Signal 2035. UCOR 517 reads 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."

There are two components of UCOR 517 that must be satisfied in the circumstances of a train overrunning a STOP indication:

(1) Immediately protect the front of the train as prescribed by Rule 99

and

(2) A member of the crew must immediately communicate with the train dispatcher.

The evidence disclosed that Engineman McAndrew coxmunicated "ixmediately" with his dispatcher but did not perform the flagging duties that is contemplated by Rule 99.

It is the company's case that the grievor's "first" duty was to perform these flagging duties. The trade union submitted that the grievor could not perform both tasks simultaneously. And by the time the grievor contacted the dispatcher he was given clearnncce to proceed with his run. In short, he did not have the opportunity to perform the second requirement of UCOR 517.

In examining UCOR 517, I can discern no obligation expressly required of an employee to perform flagging duties "first" before contacting his dispatcher. What the text of the Rule indicates is that both the flagging duties and the contacting of the dispatcher are to be done "immediately". There is no indication, other than the juxta-position of the express requirement for fulfilling each component of the Rule, that the flagging function ought to take priority over the equally immediate requirement of contacting the dispatcher.

Since the grievor "immediately" contacted his dispatcher he was entitled to assume, with some measure of reasonableness and predictability, that his Conductor would attend to the flagging obligation. Indeed, the Conductor was disciplined by the imposition of ten demerit marks for his dereliction in failing to adhere to UCOR 51.

It seems apparent to me that it may make prudent sense for the company to revise UCOR 517 to make the priorities of an employee's

course of action in such circumstances clearer.

In conclusion, I have not been satisfied of an infraction of UCOR 517 and the grievor's personal record shall be adjusted accordingly.

DAVID H. KATES,
ARBITRATOR.