

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1234

Heard at Montreal, Thursday, April 12, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Prairie Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On April 6, 1983, the Rennie East track Section, consisting of Track Maintenance Foreman R. Zarichanski, Leading Track Maintainer H. Gering, and Track Maintainers R. Kurlowich and L. Charney were riding in a track motor car that ran into an unoccupied track motor car which was standing on the main track at mileage 36.2, Keewatin Subdivision. The four aforesaid employees received the following discipline:

R. Zarichanski was demoted to Track Maintainer and
H. Gering, R. Kurlowich and L. Charney were each
assessed 20 demerits.

JOINT STATEMENT OF ISSUE:

The Union contends that the discipline was excessive and that:

1. Mr. R. Zarichanski be reinstated as Track Maintenance Foreman with all his rights restored and compensated for loss of earnings.
2. Mr. H. Gering, R. Kurlowich and L. Charney have the demerits removed from their record.

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.) E. S. CAVANAUGH
General Manager,
Operation and
Maintenance

There appeared on behalf of the Company:

D. A. Lypka - Asst. Supervisor Labour Relations, CPR,
Winnipeg
G. A. Brudevold - Roadmaster, Prairie Region, CPR, Dryden
R. A. Colquhoun - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen - System Federation General Chairman, BMW, Ottawa
L. DiMassimo - Federation General Chairman, BMW, Montreal
R. Y. Gaudreau - Vice-President, BMW, Ottawa
G. Valence - General Chairman, BMW, Sherbrooke

AWARD OF THE ARBITRATOR

The evidence indicated that Track Maintenance Foreman R. Zarichanski was in control of the track motor car at the time of the alleged accident. Leading Track Maintainer H. Gering and Track Maintainers R. Kurlowich and L. Charney were passengers on the motor car at the material time in question.

The accident that resulted in the imposition of discipline may be briefly described. Apparently, Assistant Roadmaster G. A. Brudevold in anticipation of the approach of Train 404 at 14.10 hrs decided at approximately 1310 hrs to remove his track motor car from the westbound track to the eastbound track. Track Maintenance Foreman R. Zarichanski and crew were working between Mileage 33.5 and Mileage 39.0 of the eastward track. Mr. Brudevold did not attempt to contact Foreman Zarichanski by radio until a few minutes before the accident occurred. He could have but deferred making such radio contact to advise of his whereabouts at the time he transferred his car. Indeed, the company has taken the position that there was no obligation on Mr. Brudevold's part to make any such contact.

At approximately 1410 hrs. on April 6, 1983, Foreman Zarichanski and crew were proceeding eastward on the track motor car. As they approached Mileage 36.2 a curve on the track blocked the operator's view. As the car operated by Foreman Zarichanski emerged from the curve the motor car under Mr. Brudevold's control appeared. Without applying the brakes or otherwise attempting to stop the vehicle Foreman Zarichanski and crew leapt from their car causing personal injuries of varying degrees Mr. Brudevold's vehicle was in a stationary position at the time of the collision. Mr. Brudevold, fortunately, was not inside his vehicle.

A matter of some relevance was raised with respect to Mr. Brudevold's responsibility for the accident. I am satisfied, even assuming Rule 42 did not apply to him, that Mr. Brudevold was under a positive duty to have contacted Foreman Zarichanski at the time he transferred his car to the eastward track. This is not merely a "curtesy" gesture as suggested by the company at the hearing but a positive duty that makes good common sense.

Mr. Brudevold's omission, however, did not relieve Foreman Zarichanski from his duty to adhere to the standards of safety in the operation of his vehicle as prescribed by the numerous operating rules set out in the company's brief. It is simply no defence to the grievor's dereliction to argue that Mr. Brudevold contributed to the accident. Mr. Brudevold's omission simply magnifies Foreman

Zarichanski's responsibility to adhere to these operating rules. Nor is it any defense to argue that Foreman Zarichanski remained at the time of the accident well within the maximum speed limit of twenty-five miles as prescribed by Rule 69, Form 568. He was required to operate his vehicle with sufficient and reasonable care consistent with the prevailing conditions. In this regard while approaching a curve on the track the grievor was duty bound to operate at a speed that would have enabled him to apply his brakes in time to avoid any unanticipated contingency. This was stressed in the company's brief at page 9:

"In curves where the distance you can see ahead is short, speed must be reduced. You should be able to stop in half the distance you can see."

The uncontradicted evidence disclosed that Foreman Zarichanski and crew simply "panicked". Without even trying to apply the brakes Foreman Zarichanski and crew leapt from the vehicle causing themselves serious injury. I am satisfied that their reaction was precipitated by the failure to exercise the required standard of care. For these reasons, I am satisfied that the company had cause to impose a disciplinary penalty.

In Foreman Zarichanski's case I am not satisfied that a permanent demotion was an appropriate response. No evidence of a previous incident was adduced that could be applied in these proceedings to warrant his permanent demotion. As pointed out at the hearing the previous incident of misconduct referred to in the company's brief was not placed on the grievor's personal record. Accordingly, I am of the view that the permanent demotion imposed should be substituted by a demotion of 14 months duration. At the expiry of his demotion Mr. Zarichanski is to be returned to his regular foreman's position.

In addition I have encountered some difficulty in appreciating how the three members of the crew could have prevented the accident. I am prepared to accept the company's submission that each was duty bound to have alerted Foreman Zarichanski of his inappropriate operation of the vehicle. The imposition of twenty demerit marks for that infraction however was clearly much too harsh. I am of the view that a written reprimand should be inserted into their personal records in lieu thereof.

For all the above reasons the company is directed to make the adjustments to the grievors' personal records.

DAVID H. KATES,
ARBITRATOR.