

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1236

Heard at Montreal, Tuesday, May 8, 1984

Concerning

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Discipline assessed Mr. Jerry Purdy (temporary demotion) from Extra Gang Foreman.

JOINT STATEMENT OF ISSUE:

Effective September 28, 1983, Extra Gang Foreman J. Purdy was advised by the Company that he was restricted from working positions of Extra Gang Foreman or Assistant Extra Gang Foreman for the balance of 1983 and all of 1984.

The Union contends the discipline assessed was improper and severe.

The Company denied the Unions contention.

FOR THE BROTHERHOOD:

(SGD.) A. F. CURRIE
System Federation General
Chairman

FOR THE COMPANY:

(SGD.) P. A. DYMENT
General Manager

There appeared on behalf of the Company:

A. Rotondo - Manager Labour Relations, ONR, North Bay
G. A. Payne - Chief Engineer, ONR, North Bay

And on behalf of the Brotherhood:

A. F. Currie - System Federation General Chairman, BMWE,
Winnipeg
R. Y. Gaudreau - Vice-President, BMWE, Ottawa

AWARD OF THE ARBITRATOR

The grievor was assessed a disciplinary demotion of approximately seven months duration from his regular position as Extra Gang Foreman for violation of Operating Rules, Rule 42, Example (2) which reads as follows:

"In radio equipped territory when Example (2)
of Form Y train order protection has been

provided and Foreman so advised, Rules 40 and 41 may be modified as follows:

(g) A train holding Example (2) of Form Y train order must not proceed beyond the signals prescribed in Clause (e) until instructions have been received from the Foreman named in the order, either by means of radio communication or personal contact."

On September 19, 1983, the company alleges that Extra Gang Foreman J. Purdy cleared a train, Extra 1805 South, without confirming that the track limits stipulated in his work order were clear. Indeed, as a result of said clearance a collision occurred between train Extra 1805 South with a track motor car operated by Gang Supervisor Mr. J. Sinopoli.

Apparently in anticipation of the early arrival of the train, Extra 1805 South, Gang Supervisor Sinopoli proceeded from the work area to advise certain members of the crew at Latchford of the oncoming train. While Mr. Sinopoli was in the course of returning to the work area on his motor car the grievor gave the train clearance. At that time the grievor advised the train crew "that he had a motor car in the area and to watch out for it".

The trade union contends that the grievor had discharged his obligations with respect to Rule 42, Example (2). He had cleared the train and cautioned the crew of Mr. Sinopoli's whereabouts in the protected area. In any event, had Mr. Sinopoli remained at Latchford until the train cleared as he purportedly represented he would, the collision would have been avoided. Accordingly, if blame need be attributed for the collision such responsibility lies with Mr. Sinopoli.

It seems to me the company's reply at the third level of the grievance procedure expresses an adequate response to this argument that I cannot improve upon. In that reply the company states:

"In my opinion, the reasons given as contributing to the rule violation are rather immaterial. Mr. Purdy was charged with ensuring that the track was clear before allowing a train to proceed past his location. He did not do this. Even if there was a misunderstanding in the communication between Mr. Purdy and Mr. Sinopoli, it was incumbent on Mr. Purdy to know that Mr. Sinopoli was in the clear rather than assume that he was staying at Latchford. If he did not definitely know that the track was clear, his only recourse was to hold the train until he found out for sure. In the operation of trains, there is no place for assumptions such as the one made by Mr. Purdy".

Aside from the clarity and accuracy of that response, I cannot resist pointing out the inconsistency in the trade union's position. Surely, there was no need to forewarn the train crew of Mr. Sinopoli's whereabouts in the protected area ("he had a motor car in

the area and to watch out") if the grievor was left with the impression that Mr. Sinopoli was to stay put at Latchford until the train cleared. Obviously, it was not the responsibility of the train crew "to watch out" for motor cars in the protected area. The grievor's responsibility was to make certain that the area was "cleared" and in that regard he failed to discharge that responsibility.

Accordingly the grievance must be denied.

DAVID H. KATES,
ARBITRATOR.