

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1264

Heard at Montreal, Tuesday, July 10, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of discipline assessed the record of Locomotive Engineer D. C. Kelly, Sarnia, September 26, 1983.

JOINT STATEMENT OF ISSUE:

On September 26, 1983, Mr. D. C. Kelly was employed as locomotive engineer Train 413, Extra 9432 West from MacMillan Yard to Sarnia. At Brantford, mileage 23.3 Dundas Subdivision, 2 diesel units and 5 cars of Train 413 were derailed.

Following an investigation, the record of Locomotive Engineer D. C. Kelly was assessed 20 demerit marks for:

"improper train handling, resulting in derailment of train, Extra 9432 West (No. 413) while employed as Locomotive Engineer, mileage 23.3 Dundas Subdivision, 26 September 1983."

The Brotherhood appealed the discipline on the grounds that it was not warranted.

The Company declined the claim.

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:

D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
J. B. Bart	- Labour Relations Officer, CNR, Montreal
J. A. Sebesta	- Coordinator Transportation - Special Special Projects, CNR, Montreal
J. Thivierge	- Manager Track-Train Dynamics, CNR, Montreal
W. G. Blevins	- Senior Mechanical Officer Motive Power, CNR, Montreal

J. L. Dafoe - Regional Master Mechanic, CNR, Toronto
H. C. Grieve - Master Mechanic, CNR, Hamilton

And on behalf of the Brotherhood:

P. M. Mandziak - General Chairman, BLE, St. Thomas
J. D. Pickle - Local Chairman, BLE, Sarnia

AWARD OF THE ARBITRATOR

In this case, Locomotive Engineer D. C. Kelly was assessed twenty demerit marks for his alleged infraction in mishandling Train 413 on September 26, 1983. At that time it is charged that the grievor improperly applied his brakes at Mileage 23.3 Dundas Subdivision in order to bring the engine and the train consist to a halt. Arising out of his alleged misapplication of the engine brakes the train derailed causing the employer a substantial financial loss.

The case revolved around the credibility of the grievor's recitation of his handling of the train at the time the derailment occurred. At all material times the air brake on the grievor's engine was operative. At Brantford, Ontario (Mileage 23.3) a set off of 17 cars was required. The grievor indicated that he had properly applied the air brakes on two occasions prior to the requirement to stop. Notwithstanding his attempts to bring the train to a halt in accordance with prescribed procedures, no real explanation was offered, other than speculation, as to why the accident occurred. The trade union suggested that the grievor simply may not have been "qualified" to operate a train with a consist approximately two miles long.

The company, through Mr. J. Thivierge, a Civil Engineer, who is an expert in Track-Train Dynamics, and its use of computer simulations of the grievor's stated procedures, demonstrated, should the grievor's statements be accepted as accurate, that the grievor should have been able to bring his train to a halt some distance prior to the actual destination point. Moreover, given Mr. Thivierge's understanding of the reasons for such derailments, he demonstrated, again through computer simulation, that the incident could only be caused by the grievor's excessive speed in operating the engine and his belated application of the air brakes or both. Accordingly, in light of the grievor's mishandling of the train he was compelled to use the emergency engine brake to bring the train to a stop. Accordingly, the derailment ensued as a result of the "buff forces" of the train consist occasioned by the abrupt application of the engine brakes.

In light of the expert testimony of Mr. Thivierge and the computer simulations adduced to support his theory of what caused the derailment I am satisfied that the evidentiary burden incumbent on the employe to substantiate its reasons for the grievor's discipline shifted to the trade union to provide an adequate explanation for the incident. The trade union's representative indicated that he could only speculate as to what caused the incident. In his view, the grievor performed his duties as was required of him. In short, the

trade union maintained that the derailment could have been caused by any number of reasons save and except the grievor's own negligence.

It is my view that the trade union has not satisfied the evidentiary burden foisted upon it by the employer's expert witness. Mr. Thivierge provided a scientific explanation for what caused the derailment without challenge or rebuttal from the trade union. But, of more importance, Mr. Thivierge demonstrated, again through scientific means, that the grievor's description of the procedures he followed in applying the train's air brakes cannot be accepted as accurate. Rather, the only inference that I can possibly draw from the evidence is that Mr. Kelly was solely responsible for the incident. Accordingly, in absence of a more compelling reason for the derailment, I am compelled to hold the grievor accountable for the accident.

Because this incident appears to be the first infraction committed by the grievor over a ten year career as a Locomotive Engineer, I am persuaded that the penalty of twenty demerit marks should be reduced to ten. Save for that change, the grievor's grievance is denied.

DAVID H. KATES,
ARBITRATOR.