

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1284

Heard at Montreal, Wednesday, October 10, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed the record of Yard Foreman R. T. Bird, Toronto, 2 July 1983.

JOINT STATEMENT OF ISSUE:

On 2 July 1983, Mr. R. T. Bird was employed as Yard Foreman on the 0700 Extra Coach Yard assignment, in Bathurst Street Coach Yard, Toronto. During switching movements into Track No. 19, VIA Coach 2138 derailed.

Following an investigation, the record of Yard Foreman R. T. Bird was assessed 10 demerit marks effective 2 July 1983 for:

"violation of UCOR Rule 104, paragraph 2,
resulting in derailment of VIA Coach 2138,
Track 19, Bathurst St. Coach Yard."

The Union appealed the discipline on the grounds it was not warranted.

The Company declined the appeal.

FOR THE UNION:

(SGD.) W. G. Scarrow
General Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Assistant Vice-President
Labour Relations.

There appeared on behalf of the Company:

J. B. Bart	- Labour Relations Officer, CNR, Montreal
D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
J. A. Sebesta	- Coordinator Transportation, CNR, Montreal
J. L. Meleski	- Track & Roadway Engineer, CNR, Toronto
R. D. Jamieson	- Trainmaster, CNR, Toronto

And on behalf of the Union:

W. G. Scarrow	- General Chairman, UTU, Toronto
R. A. Bennett	- General Chairman, UTU, Toronto
B. LeClerc	- General Chairman, UTU, Quebec

K. Joudwa - Local Chairman, UTU, Toronto
R. T. Bird - Grievor, Toronto

AWARD OF THE ARBITRATOR

On July 2, 1983, Yard Foreman R. T. Bird was in charge of the 0700 Extra Coach Yard assignment at the Bathurst Street Coach Yard, Toronto. The grievor was charged with the responsibility of directing a number of cars to designated trackage within the yard. In doing so, the grievor was in charge of operating the switches directing the cars to the desired location. And, in the operation of these switches the grievor was obliged to adhere to UCOR Rule 104 requiring that "switches must at all times be secured".

While performing these duties Coach No. 2138 approached Track No. 19 and as two cars passed the switch the switch handle began moving "erratically". The grievor radioed the Locomotive Engineer to stop his train. During the course of the investigation of the train consist "the fourth car from the leading end of the movement had derailed". The period between the grievor's handling of the switch at Track No. 19 and the derailment was not more than 30 seconds.

The company concluded that the direct cause of the derailment was caused by the grievor's failure to insert a "hook like" device at the base of the hand lever of the switch. This device, referred to as "the keeper", is designed to hold the switch handle in a fixed position. Accordingly, when the train consist passed by the switch the vibrations of its movement caused the switch handle to open. Had the grievor secured the switch by the insertion of the "keeper" it is alleged that the derailment would not have occurred. Accordingly, the grievor was disciplined by the imposition of ten demerit marks for his alleged failure to adhere to UCOR Rule 104.

The trade union's position with respect to the cause of the derailment does not differ dramatically from the company's. The trade union has embellished the reasons by virtue of the worn nature of both the switch and the points on Track 19 as contributing causes. Its principal dispute with the company pertains to the reason why the "keeper" was not in place at the time of the derailment. That is to say, it is alleged the very vibrations in the train's movement that caused the switch handle to move also caused the "keeper" to dislodge from its position at the base of the lever.

In other words, the grievor denies that he failed, as alleged by the company, to insert the "keeper". For the various reasons suggested by the trade union the hypothesis was advanced that the derailment was caused for reasons that were independent of the grievor's indifference to UCOR Rule 104.

In resolving this dispute I do not find that the number reasons advanced by the trade union as contributing factors causing the derailment are inconsistent with the grievor's alleged failure to insert "the keeper". Indeed those reasons clearly establish the prudence of a strict adherence to UCOR Rule 104 ensuring that

switches are properly secured.

What the uncontradicted evidence established is that within 30 seconds of the grievor's handling of the switch in question the derailment occurred. Both parties agree that the principal cause was attributable, amongst other causes, to the switch not being secured by a "keeper". The evidence further established that both before and after the incident the same procedures were followed in directing train movement within the yard without the "keeper" becoming dislodged. In short, in having regard to the preponderance of the evidence the balance of probabilities dictate that the grievor failed to secure the switch at the time in question by the insertion of the "keeper".

In light of this finding I find no reason to remove the relatively lenient penalty of ten demerit marks for the grievor's infraction. The grievance is denied.

DAVID H. KATES,
ARBITRATOR.