

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1285

Heard at Montreal, Wednesday, October 10, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of 30 demerit marks assessed the record of Yard Foreman R. T. Bird of Toronto, Ontario and subsequent discharge due to accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

On 21 December 1983, Mr. R. T. Bird was employed as Yard Foreman on the 1515 West Control Yard assignment, MacMillan Yard, Toronto. The 1515 West Control Yard assignment was involved in a collision with the 1600 South Control Yard assignment.

Following an investigation, the record of Yard Foreman R. T. Bird was assessed 30 demerit marks effective 21 December 1983 for:

"Failure to be vigilant in the execution of duties, resulting in violation of Rule 105, UCOR and Item 3.3 paragraph 3, Form 696 and subsequent yard movement collision Green Route, MacMillan Yard while employed as Yard Foreman on the 1515 West Control assignment, 21 December 1983."

As a result, Yard Foreman Bird was discharged for accumulation of demerit marks, effective 27 January 1984.

The Union appealed the assessment of 30 demerit marks, and the resultant discharge on the grounds that it was unjustified.

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
W. J. Rupert - System Manager Rules, CNR! Montreal
K. J. Dejean - Senior Transportation Englneer, CNR, Montreal
S. L. Pound - Assistant Superintendent, CNR, Toronto
J. L. Dafoe - Regional Master Mechanic, 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

The grievor, Mr. R. T. Bird, Yard Foreman, MacMillan Yard, was assessed thirty demerit marks for his involvement on December 21, 1983, in a collision with another train consist caused in part by his alleged failure to adhere to UCOR Rule 105. UCOR Rule 105 reads as follows:

"Unless otherwise provided by signal indication, trains or engines using other than a main track must proceed at restricted speed.

"restricted speed" means a speed that will permit stopping within one-half of the range of vision ."

The grievor was also alleged to have violated Item 3.3 paragraph 3 of The General Operating Instructions, Form 696. The trade union has admitted that the grievor was in "technical violation" of this Rule by failing to inform his Locomotive Engineer of the ultimate destination of the train run. The evidence has not established that this infraction necessarily contributed to the accident.

At the time in question the grievor was instructed to take his train down "the Green Route" to pick up two vans from the van siding. His statement made during his investigation established that the grievor was warned on several occasions to look for the whereabouts of "White Two Control South Engine" moving in the same work area.

In describing the collision the grievor indicated that he observed the oncoming consist coming out from underneath the Bridge (at Highway 7). The company has calculated that the grievor was approximately 540 feet away when he first sighted the oncoming train consist. Accordingly, in order for him to have complied with UCOR Rule 105 the grievor would have to have stopped within 270 feet of the other train. The collision occurred at the midpoint of this distance. In other words, for purposes of avoiding an infraction of UCOR Rule 105, the grievor would have to be going at a speed that ensured his ability to stop within half his field of vision of the train. This would also have clearly prevented the accident from

occurring.

The company adduced scientific data derived from the simulated tests carried out by its expert witnesses to establish that the grievor's train consist was travelling in excess of what would permit his stoppage within half his range of vision. Moreover, given the standards applied in the materials used in the construction of cars, the scientific evidence also established that the force of the impact of the colliding trains was in excess of 14 mph. The company, based on its expert evidence, estimate the grievor's train was travelling at approximately 17 mph.

The grievor stated during his investigation that his train was moving "roughly" at 5 to 7 mph. Locomotive Engineer Collins asserted that his train was moving at no more than 2 to 3 mph. The latter statement was corroborated by the allegedly independent observations of Car Control Clerk, Gary Ross.

Arising out of this incident each member of the crew of both train consists were disciplined for breach of UCOR Rule 105. The grievor was the most severely disciplined (30 demerit marks) owing, in part, to his abysmal disciplinary record. At the time of this incident the grievor had accumulated 40 demerit marks (inclusive of the ten demerit marks imposed by the Company for the incident described in CROA Case #1284). Locomotive Engineer Collins was assessed 15 marks for his infraction of UCOR Rule 105.

In resolving this dispute it must be emphasized that I am not being asked to determine the party who primarily or incidentally caused the collision. In this regard I have no reason to dispute the notion that both the grievor and Locomotive Engineer Collins would share some responsibility for the incident. The degree of their joint blame, however, must be determined in a more appropriate proceeding.

The issue before me is whether the grievor was operating his train consist at a rate of speed dictated by UCOR Rule 105 and that could enable him to stop within half his range of vision of the oncoming train. Had he operated his train in accordance with the appropriate restricted speed I have no doubt that the collision would have been avoided. The most damning evidence against the grievor is the simple fact that he could not stop in time. Indeed, he had to jump off the train along with his helper, in order to avoid serious injury. Surely, this admitted scenario of the collision is inconsistent with the prudent exercise of care as contemplated by UCOR 105.

Of course, the company's expert evidence does not enhance the credibility of the grievor's statement that he was travelling between 5 and 7 mph. Nor does the trade union's strategy in attempting to shift the blame for the collision on to Locomotive Engineer Collins' handling of his train mitigate the grievor's culpability. As I have suggested, Mr. Collins' responsibility, whatever the extent, cannot be seen to exculpate the grievor's infraction. The evidence demonstrated the plain truth that the grievor was warned on several occasions to be concerned about the whereabouts of the train consist operated by Locomotive Engineer Collins on the Green Line. He appears to have simply ignored those warnings and to have thrown

caution aside. As a result, the grievor imprudently operated his train in excess of the restricted speed allowed by UCOR Rule 105. He accordingly must accept the consequences of his actions.

In having regard to the grievor's disciplinary record I am satisfied, despite his ten years service with the company, that I would be creating a serious hazard to railway traffic should I exercise my discretion to reinstate the grievor. As a result, I am compelled to sustain the grievor's discharge and reject his grievance.

DAVID H. KATES,
ARBITRATOR.