

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1299

Heard at Montreal, Wednesday, November 14, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Atlantic Region)

and

(RCTC) RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Discipline assessed Train Dispatcher M. J. Julien, Montreal, Quebec.

JOINT STATEMENT OF ISSUE:

While working the Third Trick East Desk at the St. Luc Dispatching Centre, Montreal, on July 16, 1983, Train Dispatcher M. J. Julien was responsible for train movements operating on the Adirondack and Sherbrooke subdivisions between Farnham and Megantic. A clearance was issued at Farnham, OK'd at 2305 July 15, 1983, to a train with engine 4570, thereby giving it authority to run as Extra 4570 South on the Adirondack Subdivision in Centralized Traffic Control (CTC) territory from Farnham to Brookport. Dispatcher Julien was required to issue to this train at Farnham train orders and a clearance to allow it to proceed from Brookport to Megantic on the Sherbrooke Subdivision. Train Dispatcher Julien cleared the train at Farnham at 0120 July 16, 1983 as Extra 4570 East to proceed from Brookport to Megantic but failed to issue a Form G, Example (4), train order, the train order authority required by an extra train.

Based on the facts adduced in a formal investigation, Train Dispatcher Julien was informed in writing on July 27, 1983 that he was "being restricted from working as Train Dispatcher for one (1) year for failure to issue train order Form G, Example (4), to Extra East 4570, July 16, 1983, resulting in a violation of U.C.O.R. Rule 97, paragraph 1".

The Union contends that the discipline assessed Train Dispatcher Julien is inappropriate.

It is the Company's position that the discipline assessed was justified and proper in the circumstances.

FOR THE UNION:

(SGD) D. H. ARNOLD  
System Chairman  
RCTC - CP Division.

FOR THE COMPANY:

(SGD.) J. L. FORTIN  
Acting General Manager  
Operation and Maintenance.

There appeared on behalf of the Company:

J. W. McColgan - Labour Relations Officer, CPR, Montreal  
J. H. Blotsky - Assistant Supervisor, Labour Relations, CPR,  
Toronto  
F. Beaudoin - Manager of Rules, CPR, Montreal

And on behalf of the Union:

D. H. Arnold - System Chairman, RCTC - CP Division

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#### AWARD OF THE ARBITRATOR

It is common ground that the grievor, Train Dispatcher M. J. Julien, failed on July 16, 1983 to issue train order Form G, Example (4) to Extra East 4570 when he gave clearance to proceed thereby resulting in a violation of UCOR Rule 97, paragraph 1. There is no dispute that the grievor's inadvertance could have conceivably resulted in "a head on" collision with another train using the same trackage. One effect of the issuance of the Form G, Example (4) Order is to notify all traffic of the existence of the train using the same trackage.

Because of the seriousness of the grievor's violation the company demoted Mr. Julien for a period of one year to a lesser paying position within the bargaining unit. It is of some significance to note that the Locomotive Engineer who proceeded without the appropriate authority was also demoted for a like period.

The only issue raised by the trade union was whether demotion was an appropriate disciplinary response to the grievor's infraction and, if so, whether the length of that demotion was just and reasonable in all the circumstances.

My response to each component of that issue is in the affirmative.

Demotion is an appropriate disciplinary response, as the CROA precedents establish, where the infraction, such as a violation of the UCOR Rules, goes to the root or the essence of the service provided by an employee. Mr. Julien, in his capacity as the Train Dispatcher, performs a pivotal function in ensuring the smooth, safe and expeditious operation of the railway traffic within the jurisdiction he exercises at an given time. Inadvertance of those rules necessarily raises a legitimate doubt in the employer's mind as to that employee's reliability. A demotion serves the corrective purpose of impressing upon the delinquent employee the seriousness of the infraction so that, when reinstated, further infractions of this nature are not likely to recur.

While a year's demotion does appear to represent a rather harsh response to a single infraction, nonetheless the severity of the penalty must reflect the consequences that might have ensued as a result of the grievor's inadvertance. The objective of a demotion of one year's duration is to ensure that the grievor has sufficient

opportunity to ponder the consequences of the violation of the UCOR Rules so that the corrective influence of the penalty will not be lost. In other words, short of discharge, I cannot fathom a more serious expression of the company's concern with respect to the misconduct exhibited by its employees than the imposition of a long term demotion.

Given the seriousness of the grievor's infraction I simply am not disposed to alter the penalty that was imposed. The grievance is accordingly denied.

DAVID H. KATES,  
ARBITRATOR.