

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1306

Heard at Montreal, Thursday, November 15, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of 40 demerit marks assessed the record of Locomotive Engineer W. J. Fex of Hornepayne, Ontario, effective March 7, 1984.

JOINT STATEMENT OF ISSUE:

On March 7, 1984, Mr. W. J. Fex was employed as Locomotive Engineer on Extra 9494 West operating between Foleyet and Hornepayne, Ontario. At Missonga on the Ruel Subdivision, Extra 9494 West passed Signal 1661 displaying a stop indication.

Following an investigation, the record of Locomotive Engineer W. J. Fex was assessed 40 demerit marks, effective March 7, 1984, for:

"Violation of Uniform Code of Operating Rules, Rule 292 and 517 at Signal 1661 Missonga, Ruel Subdivision, and failure to comply with General Operating Instructions CN Form 696, Item 3.4 while employed as Engineman on Extra 9494 West, March 7, 1984."

The Union appealed the assessment of 40 demerit marks on the grounds the discipline was too severe.

The Company declined the appeal.

FOR THE BROTHERHOOD:

(SGD.) P. M. MANDZIAK
General Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
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. B. Sebesta	- Coordinator Transportation, CNR, Montreal
W. J. Rupert	- Manager Rules, CNR, Montreal
K. P. Dejean	- Senior Transportation Engineer, CNR, Montreal

And on behalf of the Brotherhood:

P. M. Mandziak - General Chairman, BLE, St. Thomas
G. N. Wynne - General Chairman, BLE, Montreal
G. Thibodeau - General Chairman, BLE, Quebec

AWARD OF THE ARBITRATOR

In this case the grievor, Locomotive Engineer W. J. Fex, was assessed forty demerit marks for his violation of UCOR, Rule 292 for his failure to bring his train to a stop at Signal 1661, Missonga, Ruel Subdivision and his subsequent failure to contact his dispatcher by radio to advise of his infraction in violation of General Operating Instructions CN Form 696, Item 3.4 while employed as an Engineman on Extra 9494 West, March 7, 1984.

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The trade union has conceded that the grievor, on the facts adduced, merited the imposition of 30 demerit marks for his violation of UCOR Rule 292 in failing to bring his train to a proper stop at Missonga, Ruel Subdivision.

The only issue that was raised was whether the company had reasonable and proper grounds to discipline the grievor for his alleged violation of General Operating Instructions CN Form 696, Item 314 which reads in part:

"3.4 EMERGENCY PROCEDURES

NOTE: When initiating an emergency call, it must first be given on Channel 1 (End-to-End) to alert other train or engine movements in the vicinity. The call must then be immediately repeated on the channel of the train dispatcher who has control of the territory involved.

When a train or movement is stopping as the result of an emergency application of the brakes, and other movements may be affected, the engineman or any other employee must initiate an "EMERGENCY" call, giving identification and location, stating that the train or movement has gone into emergency. This does not relieve other employees of their responsibility under UCOR Rule 102.

Reports of derailments, storms, washouts, fires, obstruction of tracks, failure of a train or engine to stop before passing a signal indicating STOP, or other matters which could cause serious delay to traffic, damage to property, injury to employees or others, shall be classed as an EMERGENCY."

The grievor's excuse for not making radio contact with his dispatcher in order to advise him of the "emergency" he had created was because of a defective radio. In this regard, the work sheet provided enginemen to note any irregularities in the operation of their locomotive engine shows that on March 2 and March 4, 1984 both

Locomotive Engineer Merriman and Locomotive Engineer Fex indicated that the radio in their engine was not operating properly. There does not appear to be any indication on the work sheet that the defective radio was repaired.

Nonetheless, the material contained in the company's brief shows that the radio was certainly operating at the outset of the grievor tour of duty on March 7, 1984. The evidence also discloses that the radio was in good order both before and after the incident that prompted the grievor's violation of UCOR Rule 292. And, even at that time, the undisputed evidence indicated that the dispatcher made radio contact with the grievor at which time he learned of the grievor's failure to stop at the appropriate signal.

It appears to me that on the balance of probabilities the only inference that I can draw from the information disclosed in the company's brief is that some time after March 4, 1984 the radio on the grievor's train was repaired. Otherwise, I cannot appreciate why the grievor, owing to the risks he might encounter, proceeded to operate a train engine with a defective radio. Moreover, at all material times during the course of the run the radio was in good operation except, as alleged by the grievor, when the incident occurred. I simply am compelled by the evidence to conclude that the grievor's excuse for the violation of Item 3.4 is not credible and does not merit acceptance.

Accordingly, given the serious nature of both infractions, I am not disposed to interfere with the quantum of the penalty imposed. The grievance is therefore dismissed.

DAVID H. KATES,
ARBITRATOR.