

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1311  
Heard in Montreal, Wednesday, December 12, 1984.

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Pacific Region)

and

(RCTC) RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Discipline assessed Train Dispatcher D. W. Quesnelle, Calgary, Alberta.

JOINT STATEMENT OF ISSUE:

On August 12, 1983, Train Dispatcher D. W. Quesnelle issued a Form W Example 1 train order, as established under the Uniform Code of Operating Rules, to Train Number 404 at Dunmore. Train Number 403, a superior train by train order, was not shown on the Form W Example 1 train order at Dunmore.

Following a Company investigation, Train Dispatcher Quesnelle was issued discipline (letter from Superintendent L. A. Clarke dated August 30th, 1983) which stated that he was restricted from working as Train Dispatcher until February 12, 1984 - for failing to show overdue Superior Train No. 403 on Form "W" Train Order No. 854 issued to Train No. 404 at Dunmore, Alberta August 12, 1983.

The Union contends that the discipline assessed Train Dispatcher Quesnelle is excessive.

The Company contends that the discipline assessed Train Dispatcher Quesnelle is appropriate.

FOR THE UNION:

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

FOR THE COMPANY:

(SGD.) L. A. HILL  
General Manager  
Operation and Maintenance.

There appeared on behalf of the Company:

F.R. Shreenan, CP Supervisor, Labour Relations - Vancouver  
J.W. McColgan, CP Labour Relations Officer - Montreal.  
G.H. Veilleux, CP Manager, Training and Time Service -  
Transportation - Montreal.

And on behalf of the Brotherhood:

Darrel Arnold, CP System Chairman - Winnipeg.- RCTC  
Cam Ellison, CP System Vice-Chairman - Winnipeg - RCTC

Nick Pugh                   CN System Chairman - Winnipeg, RCTC  
Ron Hillis                   CN Local Chairman - Edmonton, RCTC  
Ray Leclerc                CN System Vice-Chairman - Montreal, RCTC.

#### AWARD OF THE ARBITRATOR

In simple terms the grievor, Train Dispatcher D.W. Quesnelle, was disciplined for giving a clearance order to Train No.404 at Dunmore when he knew or should have known that the overdue "superior" Train No.403 had not yet arrived at Dunmore. The effect of the issuance of the clearance order to Train 404 could have resulted in a serious accident. It is common ground that the grievor has admitted that he made a mistake in issuing the premature clearance.

The trade union's main defence to the grievor's apparent in- fraction pertained to the overworked situation afflicting train dispatchers working at the dispatcher's desk at Calgary. In this context, subsequent to the incident, the Company has taken appropriate steps to correct the manpower situation. It followed therefore that the grievor, because of his work situation at the time of the incident, should not be held accountable for the incident or at least should have the quantum of the discipline imposed substantially reduced.

The second trade union argument with respect to mitigation of the penalty pertained to the alleged responsibility of the train crew on Train 404 to check the register at Medicine Hat to ensure that Train 403 had arrived at Dunmore before proceeding. Since the train crew made no such effort they should have been vulnerable, just as the grievor, to a severe disciplinary penalty. Accordingly, it was suggested that the grievor should be exonerated in a like manner.

In dealing with the trade union's first argument I quite agree that an employee cannot or should not be expected to work beyond what may be considered a reasonable standard having regard to the many duties that are required of him to be performed. And, indeed, an overworked employee should not be required to perform duties that will present a hazard to his colleagues and the public that is being served. The appropriate response by an employee to the work situation described by the trade union at Calgary is to maintain the performance of his or her work responsibilities in accordance with a reasonable standard of care. This may very well result in a delay in the completion of those duties.

Such circumstances however do not warrant throwing caution to the wind. The grievor continues, however harassed by other work considerations, to be responsible for providing operative orders to train crews that are sound and accurate. In short, a busy work environment cannot be seen to justify inattentiveness in making directives that are relied upon by Rail traffic under whose jurisdiction the train dispatcher exercises authority.

In regard to the trade union's alternative argument, I am satisfied that the territory surrounding Medicine Hat is governed by CTC regulation and therefore a search of the register at Medicine Hat would have had no relevance to the U.C.O.R. Rules affecting the safe movement of traffic at Dunmore. Accordingly, the trade union's efforts to shift the grievor's responsibility for the incident to the

train crew manning Train 404 cannot succeed. At least, it does not exonerate the grievor for his responsibility for the infraction.

Because I have sustained a 12 month demotion for a similar infraction in CROAcase #1299, I have had no compelling reason presented to me as to why a demotion of 6 months duration is not appropriate in the grievor's circumstance.

For all the foregoing reasons the grievance is denied.

DAVID H. KATES  
ARBITRATOR.