CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1335

Heard at Montreal, Wednesday, February 13, 1985

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Eastern Region)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Payment for 3 days' lost wages and removal of discipline assessed Locomotive Engineer R. Goudreault, Montreal, Quebec, as a result of incident on February 20, 1984 at St.Luc Yard, Montreal.

JOINT STATEMENT OF ISSUE:

On February 20, 1984, Mr. R. Goudreault was employed as Locomotive Engineer in St.Luc Yard on Extra Hump Yard Assignment ordered for 0800 hours. At approximately 1515 hours the Hump Yardmaster instructed Mr. Goudreault to accelerate the speed of his movement. Mr. Goudreault failed to comply with this instruction. Several minutes later, the General Yardmaster issued similar instructions to Mr. Goudreault to accelerate the speed of his movement. Mr. Goudreault again failed to comply.

An investigation was conducted on February 23, 1984 and Locomotive Engineer R. Goudreault was assessed 25 demerit marks for insubordination following his refusal on February 20, 1984 to comply with instructions of the General Yardmaster and Hump Yardmaster.

The Brotherhood appealed the discipline of 25 demerit marks including payment for 3 days' lost wages on the grounds that it was too severe in the circumstances.

The Company declined the appeal.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) GARRY WYNNE General Chairman, Brotherhood of Locomotive Engineers.	(SGD) G.A. SWANSON General Manager, Canadian Pacific Limited (CP Rail).

There appeared on behalf of the Company:

P. A. Pender - Supervisor, Labour Relations, CPR, Toronto
J. H. Blotsky - Asst. Supervisor, Labour Relations, CPR, Toronto
R. J. Pelland - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

Garry Wynne - General Chairman, BLE, Montreal
C. Daigneault - Local Chairman, Div. 258, BLE, Montreal

AWARD OF THE ARBITRATOR

The issue raised in this case is whether the grievor, Locomotive Engineer R. Goudreault, had a legitimate excuse for failing to comply with two distinct and separate instructions of his Supervisors to accelerate the speed of his movement at the St. Luc Yard, Montreal. The grievor relied on the defence that he would be endangering his own safety as well as the safety of his colleagues had he obeyed the order to increase his speed limit. Accordingly, the grievor submits that he comes within an exception to "the obey now, grieve later" rule. Indeed, U.C.0.R. Rule 108 is relied upon for the proposition that the grievor's prime consideration ought to be for his own safety irrespective of the insistence of his supervisors with respect to his compliance of a direct order:

"Rule 108: In case of doubt or uncertainty the safe course must be taken."

I do not question the principle that safety ought to be a prime and overriding consideration in an employee's discharge of the duties of his position. Indeed, such considerations will, in an appropriate circumstance, warrant an employee's by-passing a direct order of his Supervisor and thereby relieve him of a subsequent charge of insubordinati

The problem raised in this case is the credibility of the grievor's defence. In this regard at no material time when the grievor was directed to comply with the instruction to accelerate his movement did he raise "safety" as an excuse for his non-compliance. Had he com?unicated such a concern and thereby raised a legitimate doubt in

his
Supervisors' minds then the onus would have shifted to the
Supervisors
to remove that doubt. It is important to stress that two separate
orders
were given the grievor. He therefore had ample opportunity to
com?unicate
his safety concerns to his Supervisors assuming such concerns were
legitimately held.

Moreover, at the time of the disciplinary investigation no
such
safety concern was raised. During the course of the grievor's
interview
Mr. Goudreault (as well as his trade union representative) had ample
opportunity to raise the safety question. It was not until the trade
union's letter of June 21, 1984 (approximately 5 months after the
incident
that this excuse was raised belatedly as a defence to his alleged
insubordination.

In the light of the foregoing information I am reluctant to
attach credibility to the trade union's defence to the employer's
allegation of grievor insubordination. Indeed, as I understand the
evidence the grievor's movement had not as yet approached the "hump"
crest
at the time the direction to accelerate was given. Accordingly, the
trade
union's concern with respect to the alleged safety problem created by
the requirement "to pull the pins on the hump" was at best premature.

Since I have not been convinced of a credible, convincing
explanation of a perceived safety problem that would warrant the
grievor's
insubordination at the time his Supervisors' instructions were given
I do
not propose to interfere with the discipline that was imposed.
Indeed,
given the seriousness of the allegations of insubordination and my
profoun
concern about the dubious manner in which the safety issue was raised
as a defence in the circumstances of this case, I hold it would be
irresponsible for me to substitute a more lenient penalty.

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DAVID H. KATES,
ARBITRATOR.