

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1401

Heard at Montreal, Wednesday, September 11, 1985

Concerning

CANADIAN PACIFIC LIMITED (CP Rail)
(Pacific Region)

and

(RCTC) RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Discipline assessed against Dispatcher W. W. Baber, who was restricted from working as a Train Dispatcher until November 1, 1984, "for failing to ensure that Extra 5823 (sic) North did not operate when not shown on track line-up for Fording River Subdivision, a violation of Section 3.17, Train Line-Up Regulations, on October 8, 1983."

JOINT STATEMENT OF ISSUE:

On October 8, 1983, Dispatcher W. W. Baber issued a Train Line-Up on the Cranbrook and Fording River Subdivisions which was cancelled at 1600. First 48 Eng 5828 was shown to leave Fort Steele at 1230 to Fording, but it did not appear on the Fording River Subdivision subsection of the Line-Up.

This train, operating as the Extra 5828 North, departed Sparwood to Fording at 1555 on authority of a Manual Block System Clearance issued by Dispatcher Baber at 1449.

Dispatcher Baber was disciplined by being restricted from working as a Train Dispatcher for a period of one year.

The Union contends that Dispatcher Baber acted properly in the circumstances and that in any case, it was proper to allow Extra 5828 North to proceed since that movement was provided for on the Line-Up. Moreover, the penalty assessed against him was excessive, especially in the circumstances.

The Company contends that as Dispatcher Baber did not show the Extra 5828 North on the Fording River Subdivision section of the train line-up, Dispatcher Baber was at fault for not restricting the

operation of the Extra 5828 North on the Fording River Subdivision prior to 1600. The Company contends that the discipline issued to Dispatcher Baber was appropriate.

FOR THE UNION:

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

FOR THE COMPANY:

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

There appeared on behalf of the Company:

F. Beaudoin - Manager Rules, CPR, Montreal
J. W. McColgan - Labour Relations Officer, CPR, Montreal
R. T. Bay - Labour Relations Assistant, CPR, Vancouver

And on behalf of the Union:

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

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AWARD OF THE ARBITRATOR

The grievor, Train Dispatcher W. W. Baber, was demoted to a lesser paying position for a period of one year for his alleged breach of Section 3.17 of Train Line Up Regulations which state as follows:

"Except as provided for in Section 4.0 under 'Emergency Trains' while line-ups are in effect, Train Dispatchers must ensure that:

- trains do not leave ahead of times stated;
- trains do not operate when not shown in line-ups;
- trains do not operate against the current of traffic when this information has not been shown in line ups."

It is common ground that, Extra Train 5828 was given clearance at 3:55 P.M. on October 8, 1983 to leave Sparwood at a time when the Train Line-Up issued to field employees on the trackage did not identify that run. And, there is no dispute that that error created considerable risk to the safety and security of these employees. In short, the accuracy and comprehensiveness of the information contained in the train line-up is extremely important. Or, more succinctly, adherence by the train dispatcher to Section 3.17 of the Train Line Up Regulations is imperative.

I am prepared to accept the trade union's interpretation of the events that precipitated the grievor's difficulty. He had miscalculated the departure time of Extra Train 5828 at Sparwood by approximately 5 minutes. As a result of the early arrival of Extra

Train 5828 and the subsequent changeover the Train Line Up he had issued was still in force. Since the Line Up did not expire until 4:00 P.M., the standing clearance hitherto given Extra Train 5828 continued to apply. As a result, a Train was cleared to commence its run at a time when employees on the trackage would have had no knowledge of its whereabouts.

It serves no useful purpose to speculate on the measure that could have been taken by the grievor to avoid the dangerous situation he had created. Quite clearly, he could have inserted a restriction on the clearance form advising the train engineer not to leave Sparwood until 4:00 P.M. At that time a renewed clearance form and a revised line up could have then been put in place.

Nevertheless, when the grievor did learn of his miscalculation at approximately 3:25 P.M., he still had time to alert the engineer. He failed to do so. He could have radioed the engineer to wait until 4:00 P.M. at which time an appropriate line up advising the affected employees of Extra Train 5828's schedule would have been issued. He did not do this and thereby miscalculated again.

Quite clearly, I am satisfied that the grievor's inadvertance represented sufficient cause for the company's decision to demote. The grievor had hitherto received a 30 demerit mark penalty for a like infraction. In light of both incidents his carelessness legitimately raised doubts on the company's part with respect to his reliability. I am satisfied that the incident described herein falls within "the exceptional circumstance" that warrants demotions contained in the arbitration cases referred to me by the trade union in its brief. Moreover I quite agree that the grievor's inadvertance was accidental. Surely, if he "intended" the consequences for which he received discipline then he clearly should have been terminated. Furthermore, if the grievor's infraction was a first offence then the company would have been compelled to show more leniency. But, in having regard to the serious risk that was created as a result of the grievor's "gamble", I am reluctant to interfere with the penalty that was imposed.

Accordingly, the grievance is denied.

David H. Kates,
Arbitrator.