

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1479

Heard at Montreal, Tuesday, March 11, 1986

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL}
(Pacific Region)

and

UNITED TRANSPORTATION UNION

DISPUTE:

The dismissal of Trainperson K. Parkinson, Kamloops, for failing to take positive action to ensure train stopped prior to passing stop signal, resulting in side collision, derailment and damage to equipment, violation of UCOR Rule 292, February 23, 1985.

JOINT STATEMENT OF ISSUE:

On February 23, 1985, Ms. K. Parkinson was assigned as head-end Trainperson on the Extra 5857 West, which was involved in a side collision with the Extra 5846 East when the 5857 failed to stop at the west signal, 1045, at Mileage 104.5, Thompson Subdivision. The signal, 1045, showed a stop indication, UCOR Rule 292. In addition, the accident resulted in the derailment of three diesel units of Extra 5846 East and one diesel unit of Extra 5857 West as well as extensive damage to the track.

The Union contends that the evidence produced in the subsequent investigations casts serious doubt on the responsibility of Ms. Parkinson in the accident and, therefore, does not agree that Ms. Parkinson's responsibility has been established by assessing such evidence. The Union further contends that in any case, the material circumstances of her case substantially conform to the circumstances in another case where the employee was treated far more leniently and, therefore, the assessment of dismissal in Ms. Parkinson's case is too severe. The Union requests Ms. Parkinson's immediate reinstatement with no loss of seniority and payment for all time lost.

The Company contends that seriousness and severity of the accident warrants the more severe discipline assessed in the instant case and further contends that Ms. Parkinson's responsibility has been fully established and refuses to reinstate her to service.

FOR THE UNION:

(SGD.) J. H. McLEOD
General Chairman

FOR THE COMPANY:

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

There appeared on behalf of the Company:

F. R. Shreenan - Supervisor, Labour Relations, CPR, Vancouver
B. P. Scott - Labour Relations Officer, CPR, Montreal

And on behalf of the Union:

J. H. McLeod - General Chairman, UTU, Calgary
P. P. Burke - Vice-President, UTU, Calgary

AWARD OF THE ARBITRATOR

The principal issue raised in this case is whether Trainperson K. Parkinson warranted the same disciplinary fate (i.e., discharge) as was assessed against Locomotive Engineer J. St. Louis for their alleged shared responsibility for a collision of their train with another train. It is common ground that the cause of the incident was the failure of the train operated by Mr. St. Louis and Ms. Parkinson to stop at a clearly designated stop signal in violation of UCOR Rule 292. The impact resulted in a derailment, serious injury and extensive equipment damage.

The parties are agreed that Trainperson Parkinson properly advised Mr. St. Louis of the oncoming traffic signal and thereby warned him to "approach" the signal with the appropriate caution. Moreover, I shall assume as the trade union has requested that no indication was forthcoming, whether because of an inappropriate rate of speed or some other difficulty, that Mr. St. Louis would encounter any problem in obeying the oncoming signal.

Nonetheless, even if this were the case, Trainperson Parkinson was still responsible for monitoring the operation of the train and to ensure that the appropriate precautions were taken in order to avoid a violation of the UCOR Rules and a potential catastrophe.

Let me assume the example that was recited during the hearing. Suppose Locomotive Engineer St. Louis suffered an incapacitating stroke or a heart attack after Ms. Parkinson warned him of the oncoming signal. In my view she still would be required to remain attentive to the operation of the train even though she might feel confident that the Locomotive Engineer was properly in control of the situation. And so, if an unavoidable contingency does arise, as suggested, Ms. Parkinson might still take immediate action to avoid an unfortunate incident. In other words, Ms. Parkinson, in her capacity as Trainperson, has no right to repose confidence in her colleagues merely because she has discharged one very significant aspect of her duties. As a result, I cannot avoid finding that the grievor must be seen to have contributed by her inattentiveness to the incident.

But if Trainperson's Parkinson owed an equal duty as was owed by Mr. St. Louis to be attentive to the hazards of a train's operation the consequences of their breach of that duty should not be shared equally. In the language used by the company's representatives Mr. St. Louis was "primarily" responsible for the operation of the train particularly after he was forewarned by Ms. Parkinson of the oncoming signal. Ms. Parkinson may have been able to prevent the incident had she been more attentive. And, in that regard I have found that she

"contributed" to the accident and therefore is subject to disciplinary censure. But the immediate cause of the incident must be attributed to Locomotive Engineer St. Louis. He, of course, has endured the ultimate penalty of his discharge for his mistake. It is my view that the grievor because her responsibility was less immediate (but more remote) should not be seen to have suffered the same disciplinary fate.

It is my view that Ms. Parkinson should be reinstated forthwith without compensation for her alleged infraction of Rule 292. The grievor's personal record shall show a suspension for the period in question.

I shall remain seized for the purpose of implementation.

DAVID H. KATES,
ARBITRATOR.