

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1505

Heard at Montreal, Wednesday, April 9, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Discharge of Locomotive Engineer J. D. Duke, Moncton, New Brunswick.

JOINT STATEMENT OF ISSUE:

On September 5, 1985, J. D. Duke was employed as Locomotive Engineer out of Moncton, N.B. on Extra 9632 West (Train 803). At 1710, Extra 9632 West passed Signal 11 on the Napadogan Subdivision, indicating "STOP". Following investigation, Mr. Duke was discharged from the service of the Company, effective October 4, 1985, for:

Violation of UCOR 292 at Signal 11 Napadogan Sub.; UCOR 34, UCOR 517; UCOR 106; UCOR 108; UCOR General Rule F; CN Form 696 Item 2.29, paragraph (b); CN Form 696 Item 3.3, Section (1), second paragraph; falsification of an employee statement and failure to obey instructions by moving train when instructed not to by the Edmundston Dispatcher.

The Brotherhood appealed the discharge of Mr. Duke on the grounds that it was too severe.

The Company declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:

(SGD.) GILLES THIBODEAU  
General Chairman

FOR THE COMPANY:

(SGD.) M. DELGRECO  
FOR: 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
M. C. Darby	- Coordinator Transportation, CNR, Montreal
H. Hartman	- Labour Relations Officer, CNR, Moncton

And on behalf of the Brotherhood:

Gilles Thibodeau	- General Chairman, BLE, Quebec
G. F. Love	- Local Chairman, 162, BLE, Moncton
J. D. Duke	- Grievor

#### AWARRD OF THE ARBITRATOR

The only issue raised herein is whether the discharge penalty imposed on the grievor for his admitted infractions of the UCOR Rules was warranted.

It is common ground that the grievor while employed as a Locomotive Engineer out of Moncton, N.B., on Extra 9632 West ran a "stop" signal at the Pacific Junction West. The grievor indicated that he was distracted by radio information being conveyed to him at the time and did not notice the signal.

Once he realized his infraction, however, he still continued to operate the train as if no infraction occurred. Rather, while in a state of panic he decided that he would convey to his dispatcher and his colleagues the impression that the signal that was marked "red" indicated a "clearance" that would permit his train to proceed. Mr. Duke further admitted that initially he engaged in this contrivance in order to avoid the disciplinary consequences of his action.

Unfortunately, the block area in which the grievor's train intruded, without authority, was occupied by another train moving eastward. It was only because of the alertness of the dispatcher who noticed the grievor's infraction of UCOR Rule 292 on the consol of his dispatcher's desk that a disaster was averted. He immediately took action to warn the other train of the hazardous situation and directed it to stop. The dispatcher also sought the advice of the grievor as to his whereabouts. He directed it to stop and to reverse the train consist.

The grievor admitted that the only factor that caused him to appreciate the error of his strategy was the oncoming switch that was unopened and could not accept his westward bound train. It is at this juncture that the grievor compounded his wrongdoing. Rather than disclosing his initial infraction and allowing the dispatcher to direct him in the taking of appropriate action to extricate his train crew from the situation, he misled the dispatcher. He continued to advance his train in a westward direction where he had hitherto been advised to stop and reverse his train.

Nor did he make his conductor and crew privy to the situation they were in. Rather, the grievor continued, in defiance of the dispatcher's advice, to leave his crew with the impression that he was operating in accordance with appropriate instruction.

The trade union, albeit conceding the seriousness of the grievor's infractions, argued that the discharge penalty was severe. It suggested that a demotion to restricted duties in addition to a long term suspension ought to have sufficed. In this regard, it noted that the memmmbers of the grievor's crew, particularly the brakeman, were given like disciplinary penalties. Accordingly, it was argued that the employer's actions were in truth "discriminatory".

It is important that the enormity of the grievor's infractions be appreciated in my dealing with the trade union's submission. Both the grievor and his crew were appropriately disciplined for their

negligence in failing to notice a red signal at the Pacific Junction West directing their train to stop. At that juncture, however, the grievor's situation departed drastically from his colleagues. Unlike the grievor, they did not engage in a calculated strategy to deceive the employer of the commital of a serious wrongdoing. They did not conspire with the grievor in an aborted effort to leave the impression that the breached signal indicated a "clearance". And, most importantly, they did not participate in the grievor's ill conceived rebuke of the dispatcher's instructions. In other words, unlike the grievor, they did not aggravate an already hazardous circumstance caused by the initial infraction.

The grievor's infractions were so serious that I have no choice but to concur in the employer's assessment of a continued safety risk should he be reinstated. Moreover, I have had no evidence adduced in support of the trade union's charge that the employer has singled the grievor out as a "marked" man for the purpose of assessing him greater discipline than the discipline that was imposed upon his colleagues.

For all the foregoing reasons the grievance is denied.

DAVID H. KATES,  
ARBITRATOR.