

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1521

Heard at Montreal, Tuesday, June 10, 1986

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Pacific Region)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Reinstatement of Locomotive Engineer L. S. Parker, Revelstoke, B.C., who was dismissed for operating Train Extra 6016 West at excessive speeds resulting in a derailment on January 29, 1985 on the Mountain Subdivision.

JOINT STATEMENT OF ISSUE:

Locomotive Engineer L. S. Parker was dismissed on February 13, 1985 for: "operating Train Extra 6016 West at excessive speeds between Golden and mileage 53.7 Mountain Subdivision, resulting in overturned car and serious derailment, loss and damage to track, equipment and lading, a violation of Permissible Speed and Permanent Slow Order Instructions, Mountain Subdivision Footnotes, Timetable No. 98, and U.C.O Rule 106, paragraph 2, January 29, 1985".

The Brotherhood has appealed the dismissal on the grounds that it is extremely severe due to Mr. Parker's clean discipline record. Therefore, the Union requests that Locomotive Engineer Parker be reinstated to service without payment for lost time.

The Company has declined the appeal for reinstatement.

FOR THE BROTHERHOOD:

(SGD.) L. F. BERINI  
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  
R. T. Bay - Asst. Supervisor, Labour Relations, CPR,  
Vancouver  
R. J. Pelland - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

L. F. Berini - General Chairman, BLE, Calgary  
G. N. Wynne - General Chairman, BLE, Montreal

AWARD OF THE ARBITRATOR

The grievor admittedly operated his engine consist at approximately double the speed in a 30 mph speed zone.

As a result while negotiating a curve on the track the train derailed. Although no one was injured as a result of the incident, the company nonetheless characterized the grievor's misconduct as gross negligence. The costs to the company arising out of the derailment were substantial. The issue in this case is whether the grievor should be given a second chance. The trade union argued that the grievor's service of approximately eight and one half years and his clean record warranted that he be given the benefit of a second chance. Indeed, it was suggested that the company's policy in previous instances of like misconduct was to reinstate the terminated employee after one year's separation. As in most cases of this nature I must weigh the company's concern for traffic safety and the deterrent effect discharge will have on other employees with respect to like misconduct with the grievor's concern for retaining his mode of livelihood in the face of an isolated incident of aberrant behavior.

In attempting to achieve a just result in this particular instance I am compelled, in the absence of a reasonable explanation for the grievor's gross misconduct, to side with the company's overriding concern for the safety of its employees and the travelling public.

The grievance is denied.

DAVID H. KATES,  
ARBITRATOR.