

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1581

Heard at Montreal, Wednesday, November 12, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of discipline assessed the record of Conductor R. J. Gordon, Niagara Falls, Ontario, effective July 13, 1985.

JOINT STATEMENT OF ISSUE:

On June 15, 1985, R. J. Gordon worked as Conductor in charge of Train 567, a road switcher operating out of Port Robinson, Ontario. During their tour of duty Conductor Gordon and crew were given permission to leave the property with instructions to return at 2100 to handle traffic which would be arriving at about that time. After their engine, CN 4520, and caboose had been placed on the shop track at Port Robinson, Conductor Gordon and crew left the property at approximately 1615.

At around 1910, engine CN 4520 and the caboose rolled out of the shop track and onto the north main track of the Stamford Subdivision where, after travelling approximately one half mile eastward, they collided with Extra 9310 West (Train 387).

Following the investigation of the accident, Conductor Gordon was assessed a suspension of 14 calendar days commencing on July 13, 1985 for:

Violations of UCO Rule 106, which contributed to a violation of UCO Rule 112, paragraph 1 and failure to ensure equipment under your charge was properly secured when left unattended on Track JC39 which resulted in a head-on collision...

The Union appealed the discipline assessed on the grounds that Conductor Gordon was not afforded a fair and impartial investigation and that the discipline was both unwarranted and too severe.

The Company declined the Union's appeal.

FOR THE UNION:

(SGD.) R. A. BENNETT  
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. Bart	- System Labour Relations Officer, CNR, Montreal
M. C. Darby	- Coordinator Transportation, CNR, Montreal
P. G. Drew	- Assistant Superintendent, CNR, Hamilton
B. J. Mahoney	- Transportation Officer, CNR, Toronto

And on behalf of the Union:

T. G. Hodges	- Vice-General Chairman, UTU, Toronto
M. P. Gregotski	- Local Chairman, UTU, Niagara Falls

#### AWARD OF THE ARBITRATOR

The material establishes that Conductor Gordon was not present when engine CN 4520 and the caboose were placed on the shop track at Port Robinson, as he was then busy in the office. Brakeman M. K. Gander and Engineman C. Stickland were left the task of securing the locomotive and caboose, according to an instruction relayed to the locomotive by Mr. Gordon. Shortly thereafter, at the yard office, Brakeman Gander advised Conductor Gordon that the train was "put away". The Conductor took this to mean that the appropriate handbrakes had been applied to the engine and caboose respectively. The statements of Mr. Gander and Mr. Stickland, are, indeed, to that effect. Each of them states that before leaving the train on the shop track they secured the handbrake for which they were responsible, Mr. Stickland on the locomotive and Mr. Gander on the caboose.

Some three hours later, at a point when the airbrake system in the locomotive would have been drained of its pressure, the engine and caboose rolled close to half a mile on a downhill gradient, eventually colliding with train 387 which, fortunately, was stopped. No serious injuries resulted and no derailment occurred.

The position of the Company is that the handbrakes were not in fact secured by the crew under Mr. Gordon's direction, and he failed in his responsibility under Rule 106 of the Uniform Code of Operating Rules which provides:

"106 Trains will be run under the direction of their conductors. When a train is run without a conductor the engineman will perform the duties of the conductor. Conductors, enginemen, and pilots if any, are responsible for the safety of their trains and the observance of the rules and under conditions not provided for by the rules must take every precaution for protection. This does not relieve other employees of their responsibility under the rules."

It is submitted on behalf of the Company that Mr. Gordon was responsible for obtaining verbal confirmation from his crew that the necessary handbraking had been applied. It was not suggested that a Conductor must visually check each and every brake application performed by a Brakeman or an Engineman. However, it was submitted that Mr. Gordon should have availed himself of an opportunity to

visually check in this case, as he drove past the train on the shop track shortly after it was secured on his way to his meal break.

In this, as in any discipline case, the burden of proof is upon the Company. The statements of Mr. Gander and Mr. Stickland confirm that they secured the train on the shop track as instructed by Mr. Gordon. This was communicated to the Conductor by Mr. Gander's statement that the unit was "put away". It is not disputed that the application of the brakes is the immediate responsibility of the Brakeman and the Engineman, respectively. In the normal course, while a Conductor is ultimately responsible for a train, he can generally rely on the report of an experienced crew member advising that a train has been properly secured.

A critical factual issue is, of course, what caused the train to move. In this regard the Arbitrator cannot ignore the statement of Senior Transportation Clerk R. C. Johnson, who was on duty in the yard office at Port Robinson at the time the train rolled from its position on the shop track. He in fact saw the unit move past the office, believing it to be manned. His statement establishes that approximately ten minutes prior to his first sighting of the engine and caboose he observed two teenagers, whom he estimated to be big enough to disengage the manual brakes, coming from the direction of the shop track on bicycles. According to Mr. Johnson, "they came to Camby Street and took off. I noticed them as they were riding very fast". The statements of a number of the persons examined during the course of the investigation confirm that trespassers, particularly of a young age, had been a problem in and around the Port Robinson Yard.

On the whole of the material before me, I have difficulty concluding that the Company has discharged the burden of proof which it bears. While it is impossible to know with any certainty what in fact occurred, the suggestion that vandalism might have been the cause is grounded in more than blind speculation. The sighting by Mr. Johnson of two teenagers in the vicinity of the train, leaving in great haste, only ten minutes before it began to move casts substantial doubt on the theory advanced by the Company. It is not disputed that if vandalism was not the cause, then both the Engineman and the Brakeman must have failed to apply the handbrakes of the engine and caboose, respectively. Their statements are plainly to the contrary, and the statements of all of the crew members examined are materially consistent. In these circumstances I cannot conclude on the balance of probabilities, that the incident at Port Robinson was the result of any failure on the part of Mr. Gordon in the performance of his obligations, either generally or under Rule 106 in particular.

Given that conclusion, it is unnecessary to deal with a number of procedural objections raised by the Union relating to the conduct of the investigation. For the assistance of the parties, however, it should perhaps be observed that the Company's apparent failure to provide Mr. Gordon or the Union with an extensive collision report prepared by Trainmaster B. J. Mahoney, which was submitted to the Investigating Officer, the content of which goes to the mechanical condition of the braking systems, raises grave concerns. Regardless of its content, the withholding of such a document would appear inconsistent with the right of an employee under Article 82.2 to have "the right to hear all of the evidence submitted". It would appear,

at a minimum, that Mr. Gordon was entitled to have the contents of that report read to him.

For the foregoing reasons the grievance must be allowed. The fourteen day suspension registered against the grievor shall be removed from his record, and he shall be compensated for any wages and benefits lost in respect of that period. By the operation of the Collective Agreement Mr. Gordon is also entitled to the automatic reduction of accrued demerit marks by the accumulation of discipline-free service. I remain seized of this matter in the event of any dispute respecting the interpretation or implementation of this award.

MICHEL G. PICHER,  
ARBITRATOR.