

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1626

Heard at Montreal, Thursday, February 12, 1987

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Assessment of 45 demerit marks to locomotive engineers D. Emond and R. Patry, September 17, 1986, and the ensuing dismissal of locomotive engineer R. Patry, effective October 3, 1986.

JOINT STATEMENT OF ISSUE:

On September 17, 1986, locomotive engineer Patry and locomotive engineer Emond were enginemen on passenger train no. 22, Montreal to Quebec. At St. Cyrille, train no. 22 was involved in an incident which resulted in the train entering the siding at a speed in excess of that authorized. The incident was reported to Company authorities upon the arrival of train no. 22 at Quebec.

Following investigation, both locomotive engineers were assessed 45 demerit marks for violation of General Rule "E" and Rules 285 and 290 of the Uniform Code of Operating Rules. As a result, locomotive engineer Patry was dismissed for the accumulation of demerit marks.

The Brotherhood, alleging the incident is attributable to a failure of CTC at St. Cyrille and that the employees complied with General Rule "E", is requesting the removal of the disciplinary measures from the records of locomotive engineers R. Patry and D. Emond, and the reinstatement of locomotive engineer R. Patry.

The Company has declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:

(SIGNATURE) G. HALLE
General Chairman

FOR THE COMPANY..

(SIGNATURE) D.C. FRALEIGH
Assistant Vice-President
Labour Relations

ARBITRATION AWARD

The union claims that on September 17, 1986, VIA Rail train 22, travelling from Montreal to Quebec, under the direction of locomotive engineers Patry and Emond, received a green approach signal at St. Cyrille, in the Drummondville Subdivision. Contrary to normal procedures, according to the union, the following signal indicated

restricted speed and the engineers were obliged to apply their emergency brakes, entering the siding at St. Cyrille at a speed of 50 miles per hour. The company claims that the approach signal was not green but rather indicated that the train should slow down in preparation for the following signal, to allow it to turn into the siding at a maximum speed of 15 miles per hour.

The evidence shows that owing to the great distance required for braking, a train that is travelling in a territory subject to Centralized Traffic Control (C.T.C.), as in Drummondville, first receives an approach signal telling it to slow down in preparation for the home signal to the siding. The C.T.C. is remote controlled, in this case from Montreal, where a dispatcher controls the movements of trains in his territory by means of switches and signals. According to the evidence submitted by the company, which the Arbitrator accepts, because of a timing mechanism, when the switch located at the entry of the siding is closed that is, set so that the train must leave the main track, the home signal must give at least a restricted speed signal and the approach signal must tell the train crew, by means of a yellow light, that the home signal may not be passed, thereby obliging it to slow down.

The question to be settled in this case is relatively simple. Was the approach signal green or was it yellow, telling the train to slow down? The evidence shows that for safety purposes, this signal operates independently of the dispatcher under certain conditions. If the switch at the home signal is closed and the approaching train has passed the limits of the timing circuit, the approach signal and the home signal tell the train to slow down and cannot be changed by the dispatcher. At St. Cyrille, it is impossible for the dispatcher to throw the switch or change the home signal once the train has passed the timing circuit, except after a delay of three minutes built into the circuit. If the train were travelling at 60 miles per hour, it would be impossible to throw the siding entry switch in the approximately two minutes it would take the train to travel between these two points. In fact, in this case, the train was travelling at 80 miles per hour, so that there was even less time between the two points.

The Arbitrator must therefore accept the company's conclusion that, when the train arrived the home signal was indicating restricted speed and the switch was closed, therefore, less than two minutes earlier the approach signal could not have shown anything other than a yellow light. The only other possibility is that the signal system, and in particular, the timing circuit controlling the two signals, had failed. The company's evidence shows that a detailed examination of that system, done on the spot the day following the incident, found no problems with the operation of the signals, switch or timing circuit. There is no convincing evidence to back up the union's contention that the signal system malfunctioned.

An arbitrator cannot always perceive and decide on the truth of an incident. The board is limited, rather, to making a decision based on the evidence. In this case, that is the state of the approach signal at St. Cyrille on September 17, 1986, I must conclude that the version of the facts put forward by the company is more probable than that advanced by the union. My conclusion is also supported by

the fact that the two locomotive engineers, who had supposedly had a frightening experience owing to a failure of the signal system, and which endangered other trains following them, made no mention of the incident in a radio conversation with the dispatcher immediately after the incident. Given the gravity of the infraction of the Rules, the company is, therefore, justified in imposing a harsh disciplinary measure on the two locomotive engineers.

The Arbitrator finds that the penalty of 45 demerit marks is justified. However, I do not consider the dismissal of Mr. Patry, an employee with 36 years of good service, appropriate in the circumstances. It is true that he was assessed demerit marks on two occasions in 1986, and that the first time resulted from another infraction of the Uniform Code of Operating Rules, in May of 1986. It appears, nevertheless, that prior to these two incidents, which occurred within a very short time period, Mr. Patry had never been the subject of any similar disciplinary measures. For these reasons, the Arbitrator orders that Mr. Patry be reinstated in his position, without remuneration or benefits or loss of seniority, with a total of 50 demerit marks on his file.

The Arbitrator remains seized of this case for purposes of its implementation.

MICHEL G. PICHER
ARBITRATOR