

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1633

Heard at Montreal, Tuesday, April 14, 1987

Concerning

CANADIAN PACIFIC LIMITED (PACIFIC DIVISION)

And

RCTC RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Twenty-five demerits assessed Train Dispatcher McAstocker for permitting heavy track unit 4211-35 to occupy the main track without first issuing Track Occupancy Permit, violation Section 3.1, Form 3815, Mile 85.2 Mountain Subdivision, January 28, 1986.

JOINT STATEMENT OF ISSUE:

Following an investigation held on February 13, 1986, Ms. McAstocker was issued a Form 104 (discipline notice) stating that she has received twenty-five (25) demerit marks effective March 17, 1986.

The Union contends that the discipline is unwarranted and should be removed from Ms. McAstocker's record.

The Company contends that the discipline is warranted and has declined the Union's request.

FOR THE COMPANY:

FOR THE UNION:

(SGD.) L.A. HILL  
General Manager  
Operation and Maintenance  
CP Rail - Vancouver

(SGD.) D. H. ARNOLD  
System General Chairman  
RCTC - CP Division  
Winnipeg

There appeared on behalf of the Company:

F.R. Shreenan - Supervisor, Labour Relations, Vancouver  
J.W. McColgan - Labour Relations Officer, Montreal

And on behalf of the Union:

D.H. Arnold - System General Chairman, Winnipeg  
P. Taves - System General Chairman, Winnipeg  
R. Leclerc - System General Vice Chairman, Montreal

#### AWARD OF THE ARBITRATOR

The evidence establishes that the grievor allowed a heavy track unit being used for snow clearance to occupy the main track at Glacier, on the Mountain Subdivision, for a distance of something less than 20 feet without issuing the requisite Track Occupancy Permit. While her action was admittedly wrong, it was caused in part by confusion occasioned by the decision of the Foreman in charge of the equipment changing the direction in which he intended to plow both on the siding and on the main track at Glacier. The Track Occupancy Permits previously issued by Train Dispatcher McAstocker had anticipated the Foreman's initial plan. While it is true, as a general proposition, that a Dispatcher bears greater responsibility for the protection of lives and equipment than does the employee in the field (CROA Case #715), in the instant case the only rules violation as such was committed by the heavy equipment Foreman, notwithstanding that it was acquiesced in by the grievor. It is noteworthy that the Foreman, who was responsible for two rules infractions was assessed 20 demerits.

In all of the circumstances, and having regard to the mitigating factors involved, the Arbitrator concludes that 15 demerits is an appropriate measure of discipline to be applied to the grievor. Her disciplinary record shall therefore be amended accordingly.

MICHEL G. PICHER  
ARBITRATOR