

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1644

Heard at Montreal, Thursday, April 16, 1987

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Prairie Region)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Discipline of 30 demerits assessed Conductor G.A. Pohl of Moose Jaw, Saskatchewan for direct refusal to carry out a proper instruction of a Company Supervisor, May 26, 1986.

JOINT STATEMENT OF ISSUE:

On May 25, 1986, Mr. Pohl was the conductor on the Extra 5869 East ordered at Moose Jaw for 2100. This train was a run through which did not originate at Moose Jaw and therefore by Company rules required only a #2 air test prior to departure. A pull-by inspection had been performed when this train had arrived at Moose Jaw and consequently, a pull-by inspection performed by qualified carmen was not required to be conducted prior to this train's departure. Some initial problems with the air test were experienced which caused some concern to Conductor Pohl who requested and was granted a pull-by inspection by a carman. Conductor Pohl requested and was denied two carmen, one on each side of the train, to perform the inspection. Conductor Pohl advised the Yard Supervisor that he would not leave unless two carmen were used. The Yard Supervisor instructed Conductor Pohl to leave under protest which Mr. Pohl refused to do. A second carman was eventually supplied and the train under the direction of Conductor Pohl left without further delay.

It is the Union's contention that Conductor Pohl's actions were taken out of genuine concern for the safety of his train and not to be insubordinate and therefore the discipline is unwarranted and request that it be removed.

The Company denies the Union's position and contends that because Conductor Pohl did not have proper justification for his refusal to comply with the instruction of the Yard Supervisor, the discipline assessed was warranted in the circumstances.

FOR THE UNION:

(SGD.) W.M. JESSOP  
General Chairman

FOR THE COMPANY:

E.S. CAVANAUGH (SGD.)  
General Manager  
Operation and Maintenance

There appeared on behalf of the Company:

D.A. Lypka - Supervisor Labour Relations, Winnipeg  
G.W. McBurney - Assistant Supervisor Labour Relations, Winnipeg  
B.P. Scott - Labour Relations Officer, Winnipeg  
M. Marcolin - Operating Assistant, Winnipeg

And on behalf of the Union:

W.M. Jessop - General Chairman, CP Lines West, UTU, Calgary  
P.P. Burke - Vice President, UTU, Calgary

#### AWARD OF THE ARBITRATOR

The evidence establishes that on the night in question, the initial brake test conducted by Conductor Pohl was not successful. With the subsequent assistance of Car Department personnel, a successful test was subsequently performed. It does not appear disputed, however, that at that point in time the reasons for the prior unsuccessful test were not explained to Conductor Pohl. The Arbitrator accepts his assertion that notwithstanding the final successful test, the grievor retained a lingering doubt about the state of the brake system, and it is that concern which prompted his subsequent refusal to depart Moose Jaw without a pull-by inspection performed by two carmen.

Although incorrect, the grievor's concern at the time was honest. His communication with the Yard Supervisor was at all times respectful, clearly articulating his concern for safety by specifically referring to the safety provisions of the Canada Labour Code. On the whole I cannot find that his actions were frivolous or deliberately disrespectful of management's authority.

By the Union's own admission, however, in practical term the grievor's insistence on a two-person inspection was unnecessary in the circumstances. The train's braking system could have been inspected adequately by one person observing the brake lines and equipment during a pull-by. It appears not to be disputed that his error in judgement in that regard did cause a substantial delay to the train, thereby disrupting the Company's operations. In all of the circumstances the Arbitrator is satisfied that this case is a case for the substitution of a reduced sanction, having regard both to the bona fide concern which motivated Conductor Pohl's actions and his good prior record. The Arbitrator therefore orders that the discipline imposed be reduced to 15 demerits and that the grievor's record be amended accordingly.

MICHEL G. PICHER  
ARBITRATOR