

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1685

Heard at Montreal, Wednesday, September 9, 1987

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. C.G. Millions, Machine Operator, was dismissed for sleeping while operating Company self-propelled machine, Unit 3011-266, between mileage 88.0 and mileage 81.2 Lanigan Subdivision, resulting in the uncontrolled crossing of five roadway crossings and collision with other self-propelled track machine at mileage 81.2 Lanigan Subdivision, August 21, 1986 in violation of Rule 305, Form 568, Maintenance of Way Rules and Instructions.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The condition of the exhaust system was faulty and leaking fumes that could have contributed to Mr. Million's condition at the time of the accident.
2. Mr. Millions be reinstated with all seniority rights and benefits in a like manner as if he had continued to work.
3. Mr. Millions be paid for total compensation and benefits he could have earned since August 21, 1986, until reinstated and any expenses incurred account investigation and medical reports.

The Company denies the Union's contention and declines payment.

FOR THE COMPANY:

(SGD.) E.S. CAVANAUGH
General Manager
Operation & Maintenance, West

FOR THE UNION:

(SGD.) H.J. THIESSEN
System Federation
General Chairman

There appeared on behalf of the Company:

B. Mittleman - Solicitor, CP Rail, Montreal
D.A. Lypka - Supervisor, Labour Relations, Winnipeg

G.W. McBurney - Assistant Supervisor, Labour Relations, Winnipeg
R.A. Colquhoun - Labour Relations Officer, Montreal
J.W. McColgan - Labour Relations Officer, Montreal
J.J. Robson - Assistant Supervisor, Vancouver (Observer)

And on behalf of the Union:

M. Gottheil - Counsel, Assistant to the Vice President, Ottawa
M.L. McInnes - System Federation General Chairman, Ottawa
K.M. Deptuck - General Chairman, Winnipeg
G. Kennedy - General Chairman, Castlegar

AWARD OF THE ARBITRATOR

On Thursday, August 21, 1986 the grievor was the sole operator of a self propelled rail anchor squeezer working as part of the M-5 gang on the Lanigan Subdivision. The anchor squeezer is a rail mounted piece of heavy equipment used to work in tandem with other equipment in the maintenance of railbed. At 1445 the grievor's machine, along with other machines travelled some 16 miles from Drake, to Nokomis. The grievor's machine was fourth in the procession. During the course of the trip the grievor fell asleep at the controls of his machine, which proceeded along the track for a distance of 6 miles. It appears that Mr. Millions was asleep for at least 15 minutes, although the Company submits that it was closer to 30 minutes, given the average running speed of the vehicle and the distance covered. It is not disputed that during the time the grievor was asleep his machine proceeded across five public roadways, two farm crossings and two other private crossings. It finally came to a stop by colliding into the rear of the machine ahead of it, a tamper which had stopped just south of a public road at mileage 81.26, a short distance north of the intersection of the line with the CN mainline. Fortunately no serious personal injuries resulted. Mr. Millions was thrown from his seat, sustaining a minor head injury. The impact did cause extensive damage to the anchor squeezer, however, occasioning repairs in excess of \$6,000.00 as well as minor damage to a tool box on the rear of the tamper.

The sole issue is the appropriate measure of discipline in the circumstances. The Union submits that Mr. Millions should be given another chance, stressing that his disciplinary record was clear at the time. In this case the arbitrator has some difficulty with that submission. It is trite to say that safety must be a primary concern in the movement of any railway equipment. In this context sleeping on the job involves an obviously great dimension of peril. The risk to life and property that may result from an employee sleeping at the controls of moving railway equipment can scarcely be understated.

Fortunately, in this case, there was no serious personal injury or loss of life. It might easily have been otherwise, however. The heavy equipment under the grievor's control passed through a number of level crossings where a collision with a motor vehicle might

easily have occurred. As a public carrier the Company must maintain and be seen to maintain safe operations. The spectre of a piece of heavy machinery proceeding across a number of level crossings with its operator asleep at the controls, over a distance of more than six miles, obviously does little to inspire public confidence. It seriously undermines the substantial efforts of the Company, the Union and all employees to maintain a working environment that is safe for workers, patrons of the railway and the public at large.

The grievor is a relatively junior employee, with only 15 months seniority. In these circumstances his service to the Company and the state of his prior record is not compelling as a mitigating factor. In the Arbitrator's view it does not provide grounds to reduce the degree of discipline assessed against him, given the seriousness of his misconduct on the date in question. For these reasons the grievance must be dismissed.

MICHEL G. PICHER
ARBITRATOR