

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1686

Heard at Montreal, Wednesday, September 9, 1987

Concerning

CANADIAN PACIFIC RAILWAYS (West)

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. G. E. Miller, Track Maintainer Foreman, was demoted to Track Maintainer until February 28, 1988, for violation of Rules 190, 191, 192, and 215, Maintenance of Way Rules and Instructions on February 25, 1986. He was held out of service February 26 to March 4, 1986.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. Mr. Miller followed instructions and patrolled track until he had motor car trouble.
2. Mr. Miller did not violate Rules 190, 191, 192 and 215 of the Maintenance of Way Rules and Instructions.
3. Mr. Miller be paid for time out of service, reinstated as Track Maintenance Foreman and paid the difference in rate for period he was demoted from Track Maintenance Foreman.

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

FOR THE COMPANY:

(SGD.) J.M. WHITE
General Manager
Operation & Maintenance

FOR THE UNION

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

There appeared on behalf of the Company:

B. Mittleman	- Solicitor, CP Rail, Montreal
F.R. Shreenan	- Supervisor, Labour Relations, Vancouver
J.J. Robson	- Assistant Supervisor, Vancouver
R.A. Colquhoun	- Labour Relations Officer, Montreal

And on behalf of the Union:

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

AWARD OF THE ARBITRATOR

The material establishes that at approximately 0805 hours on February 25, 1986 the grievor received a telephone call at his headquarters in Parksville, on the Victoria Subdivision. The call was from his Roadmaster who was concerned about track conditions as a result of heavy rains over the previous days, which along with snow on the ground contributed to a risk of high water problems. Regular patrols had been performed by Track Maintenance Foremen on the day prior, Monday, February 24th. Roadmaster Lebourgeois instructed Mr. Miller to make a special additional patrol that Tuesday on his territory for high water. The material indicates that Lebourgeois' concern included an awareness that the regular Tuesday Courtenay Turn train was shortly due to run over the grievor's territory. He did not, however, specifically instruct the grievor to conduct his inspection in advance of that train. The grievor's own evidence, however, establishes that he believed it was appropriate to do so.

The evidence discloses that Mr. Miller made a miscalculation. He believed that he could dispose of a volume of paper work, which was due to be completed by the end of the month, before setting out on the inspection, and still be in advance of the train. In fact, while the paperwork occupied an hour and a half, he did set out, in the company of another employee, at 0940 hours, proceeding northwards from Parksville ahead of the train. Because of mechanical problems with the track motor car, however, his vehicle operated at less than full speed. Aware of the train approaching from behind, the grievor decided to take the motor car off the track at mile 102.9 to repair the problem, which turned out to be a spark plug. The repair was effected in 10 minutes, but during that time the train, Extra 8826 North, passed the grievor. Shortly thereafter, at mile 107.9, the train encountered a dangerous "slip out" of the roadbed which forced it to stop on top of the defective roadbed, at the top of an embankment, requiring a separation of the cars. No derailment or other accident occurred.

The Company maintains that Mr. Miller could and should have taken steps in response to the Roadmaster's instructions which would have better protected the train. Specifically, it argues that he should have proceeded directly to the track inspection, allowing himself ample time to travel in advance of the train that morning. Alternatively, it argues that when his track motor car failed he should have either stopped the train or signaled some communication to it to proceed with caution.

The Arbitrator has some difficulty with the Company's submission. Firstly, it is not clear that the grievor could have inspected all of

the track under his jurisdiction on the morning in question. It appears, in fact, that he did not have time to run southward to Jayem, the southern extremity of his section of track without running into Extra 8826 North. As a result all he could do was proceed northward from Parksville, thereby inspecting only the northern half of his section of track. It seems, in other words, that, in any event, by the best adherence to the Roadmaster's instructions not all of the grievor's segment of track could have been inspected in advance of the train.

As noted above, Roadmaster Lebourgeois did not specifically instruct the grievor to commence his inspection early enough in the day to ensure that it was done in advance of the train. The value of this factor is qualified, however, by the grievor's own admission that he felt the inspection should be done in advance of the train, and that he misjudged the time it would take to do the paperwork. It appears, in fact, that he was correct in his assessment. With his paper work done, he was on the track, proceeding northward in his motor car at a time which normally would have allowed him to safely inspect the track well ahead of the train. However the faulty condition of his track motor car limited the speed at which he could travel. But for that difficulty the grievor would have reached the slip out in advance of the train.

The Arbitrator does not share the Company's view of the gravity of Mr. Miller's error. On the whole, however, I cannot find that the grievor was entirely blameless. It is not disputed that he is responsible for ensuring that his track motor car was kept in serviceable condition, and that he had prior knowledge of the difficulties which caused it to slow down on the day in question. By his own admission he was aware that the inspection of the track should be conducted in advance of the Courtenay Turn train, and to some extent he misjudged the time that would be required to complete his paperwork. In all of the circumstances the Arbitrator must agree with the Company that there was just cause for the imposition of discipline. I cannot conclude, however, that the period out of service, coupled with a two year demotion was an appropriate disciplinary response in the circumstances.

I do not accept the submission of the Union that the Company was not justified under Article 18.3 in holding the grievor out of service pending the investigation. I do agree, however, that a two-year demotion for the grievor's error of judgement is excessive in the circumstances. The grievor is a long service employee, having worked as a Track Maintenance Foreman for some 10 years prior to the incident in question. It appears that for more than four years prior to this incident his record was without any infractions concerning the movement of trains. In the Arbitrator's view the grievor's actions are better described as an error in judgement rather than as negligent or reckless misconduct. In the circumstances a demotion of six months would, in my opinion, be an ample measure of corrective discipline. For the foregoing reasons the grievance is allowed in part. The grievor shall be reinstated into his position as a Track Maintenance Foreman, effective six months from February 28th, 1986, with compensation for any wages or benefits lost. I retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award.

MICHEL G. PICHER
ARBITRATOR