

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1702

Heard at Montreal, Wednesday, October 14, 1987

Concerning

CANADIAN PACIFIC LIMITED

And

RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Discipline assessed Train Dispatcher C. G. Ingram, Vancouver, B. C.

JOINT STATEMENT OF ISSUE:

On July 9, 1986, Dispatcher Ingram appeared at a Company investigation in connection with his alleged "failure to address Form Y Example 2 train order to Trains Originating at Boston Bar or to ensure this train order was so addressed when clearing a train originating at that station which was to observe the requirements of that train order; violation U.C.O. Rules 204 and 211." He appeared at a supplementary investigation into the same incident on July 12, 1986.

Following these investigations, Mr. Ingram was issued a Form 104 (Discipline Notice) on July 28, 1986, stating that his record had been debited with forty (40) demerit marks.

The Union contends that the discipline assessed is inappropriate.

The Company contends that the discipline is proper.

FOR THE COMPANY:

(SGD) J. M. WHITE
General Manager,
Operation and Maintenance,
C.P. Rail,
Vancouver, B.C.

FOR THE UNION:

(SGD) D. H. ARNOLD
Sys. Gen. Chairman
C. P. Division,
Winnipeg, Man.

There appeared for the Company:

F. R. Shreenan	- Supervisor Labour Relations,
J. J. Robson	- Ass't Supervisor, Labour Relations,
K. K. Foster	- Manager of Rules,
J. W. McColgan	- Labour Relations Officer,

And for the Union:

D. H. Arnold	- System General Chairman,
P. Taves	- System General Chairman,

AWARD OF THE ARBITRATOR

A review of the material reveals that the gravamen of the offence committed by Train Dispatcher Ingram is that he failed to identify a recording error committed by the Dispatcher who worked the tour of duty preceding his. The grievor has worked as a Train Dispatcher in Vancouver for a substantial number of years, having first been hired by the Company in September of 1972. In all that time he has been disciplined only once prior to the incident at hand, having been assessed ten demerit marks approximately ten years ago.

The material establishes that on July 7, 1986 Dispatcher Ingram worked as West Dispatcher in the Vancouver Dispatching Centre between 0001 and 0800 hours. The area of his responsibility included train movements on the Cascade Subdivision. The dispatcher on the previous tour of duty issued Train Order No. 432, a Rule 42 Form Y Example 2 Train Order issued to protect maintenance personnel working on a portion of the subdivision. Upon assuming duty Dispatcher Ingram received a Train Dispatcher's Transfer from the departing dispatcher. In accordance with Uniform Code of Operating Rules Rule 220, paragraph 4, the dispatcher going off duty dictated to him, and he wrote in ink in the Train Order Book, all train orders in effect. He then read them back aloud to the Dispatcher being relieved, as required by the rule, and each of them signed the transfer. Unbeknownst to the grievor, however, Boston Bar was not identified in the Order Book as a location for which Train Order No. 432 was to be issued.

It appears undisputed that by a process of deduction, following a close scrutiny of the Work Order Book, the grievor might have discovered that Train Order No. 432 would also apply to a small portion of trackage at Boston Bar. He did not, however, and cleared Train No. 3 at Boston Bar without appreciating that the movement of that train required the issuance of Train Order No. 432. In other words, the train crew of Train No. 3 proceeded unaware of the presence of maintenance work under way on a portion of the road over which it was to travel. Shortly after CN Train No. 3 entered the CP track its crew spotted a yellow flag placed by the track maintenance foreman in accordance with Rule 42. Its personnel then radioed other trains for instructions and any mishap was thereby averted. Following an investigation, the Company assessed forty demerits against both Dispatcher Ellison, the person who committed the initial error and whom the grievor relieved, as well as against the grievor himself.

On a careful review of the whole of the material the Arbitrator is satisfied that the imposition of forty demerits as against Mr. Ingram is excessive in the circumstances. He did not himself commit any error in respect of the initial recording of Train Order No. 432,

which was entirely Mr. Ellison's fault. There were, moreover, no notes or written notations which would give him any direct understanding that the Train Order was to apply to CN Train No. 3. The only way he could have acquired that knowledge was by an exercise of careful deduction, and even then in respect of only a relatively short portion of trackage at Boston Bar. While the grievor failed to spot the earlier mistake, his error of judgement is, in the Arbitrator's view, qualitatively different from the actions of Dispatcher Ellison. Taking that fact into account, coupled with the grievor's exemplary disciplinary record, I am satisfied that the assessment of ten demerits is the more appropriate measure of discipline in the circumstances

The grievor's record shall therefore be amended by the substitution of ten demerits in place of the forty demerits assessed against Train Dispatcher Ingram. I remain seized of this matter in the event of any dispute between the parties respecting the interpretation or implementation of this award.

MICHEL G. PICHER
ARBITRATOR