

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1728

Heard at Montreal Wednesday December 9, 1987

Concerning

CANADIAN PACIFIC LIMITED

And

RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Dismissal of Operator C. DeMoissac of Minnedosa, Manitoba.

JOINT STATEMENT OF ISSUE:

On October 30, 1986, Mr. DeMoissac was working the afternoon shift (1600 to 2359) as Operator at Minnedosa. At approximately 2111 during this shift Mr. DeMoissac received a telephone call from the Royal Canadian Mounted Police advising him that a car was stalled on the crossing one mile west of Westbourne. At approximately 2113, Operator DeMoissac commenced attempting to contact the Branch Line Train Dispatcher on the Dispatcher's radio channel phone. At approximately 2121, Operator DeMoissac attempted to contact the Branch Line Train Dispatcher on that dispatcher's government telephone but the phone rang unanswered. At approximately 2124, Operator DeMoissac telephoned the Chief Train Dispatcher's government telephone and this telephone was answered by a train dispatcher in the office who transferred the call to the Branch Line Train Dispatcher. By this time an eastbound freight train had hit the vehicle on the crossing.

Following a Company investigation into the events surrounding this incident, Operator DeMoissac was dismissed from the Company for, "inadequate and ineffective action in attempting to contact Winnipeg Dispatch Centre when an emergency situation existed with a vehicle disabled on crossing Mile 17.5, Minnedosa Subdivision, October 30, 1986."

The Union contends that the discipline assessed by the Company is totally unjust and unwarranted.

The Company contends that the discipline assessed is appropriate.

FOR THE COMPANY:

(SGD) E. S. CAVANAUGH  
General Manager,

FOR THE BROTHERHOOD:

(SGD) D. H. ARNOLD  
System General Chairman

## Operation and Maintenance

There appeared on behalf of the Company:

D. Lypka	- Supervisor Labour Relations, Winnipeg
G. W. McBurney	- Assistant Supervisor Labour Relations, Winnipeg
J. W. McColgan	- Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

D. H. Arnold	- System General Chairman
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## AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that in the instant case there were grounds to discipline the grievor. It is clear that by an exercise of judgement he could have realized that a train was in the close vicinity of the stalled car at the time he was first speaking with the R.C.M.P. In that regard he plainly erred in judgement. Secondly, when he received no answer to his telephone calls to the branch dispatcher, he concluded that that situation could not last more than a few short minutes, as a dispatcher is not authorized to leave his or her post for other than the briefest time. This judgement was also in error, as his repeated calls went unanswered for some seven minutes.

Hindsight reveals that the grievor had some nine to ten minutes to contact a dispatcher who could radio the approaching train, if the collision was to be averted. However, as noted above, he did not then appreciate the proximity of the train to the stalled van. While it is true that the collision could have been avoided had the grievor used alternative emergency telephone communication systems, or a radio relay line, it is also true that the collision might not have occurred if the Company had in place a rule comparable to that of the Canadian National Railway whose Train Dispatchers' Manual includes the following:

The train dispatcher will ensure that communications and signal control devices are adequately monitored. When necessary to leave for a brief period, arrangements must be made to have a responsible employee monitor the communications and control devices.

If the branch dispatcher had been subject to a rule equivalent to the foregoing, the grievor's call would have been answered, and the train which collided with the stalled van would have been stopped. This, however, does not excuse the grievor's

error of judgement, although it does suggest that both parties share a degree of responsibility.

In the circumstances of this case the Arbitrator must conclude that discharge is too harsh a penalty. The grievor shall therefore be reinstated into his employment, without compensation or benefits, and without loss of seniority. I retain jurisdiction in the event of any misunderstanding in respect of this remedial order.

MICHEL G. PICHER  
ARBITRATOR