

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.1778

Heard at Montreal, Tuesday, May 10, 1988

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of the discharge of Locomotive Engineer P.C. Hebert, of Edmunston, N.B., effective 7 January 1987.

JOINT STATEMENT OF ISSUE:

On November 24, 1987, while performing switching movements on the 08:00-16:00 assignment at Edmunston Yard, the locomotive under the control of Mr. Hebert passed Signal 2192 which was indicating a stop indication.

Following an investigation by the Company, Mr. Hebert's disciplinary record was assessed 30 demerit marks for:

"Violation of UCOR 292, Signal 2192, Mileage 219.4, Napadogan Subdivision, while at the control of yard engine 3644 on the 08:00 to 16:00 assignment on 24 November 19876."

This resulted in his dismissal from the Company, effective January 7, 1987, for accumulation of more than 60 demerit marks.

The Brotherhood grieved the dismissal of Locomotive Engineer Hebert, maintaining that dismissal was too severe a penalty.

The Company declined the appeal.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(Sgd)G. HALL  
General Chairman

(Sgd) M. DELGRECO  
for: Assistant Vice-President  
Labour Relations

There appeared on behalf of the Company:

J. E. Pasteris - Labour Relations Officer, Montreal  
D. Lussier - Co-Ordinator, Special Projects,  
Transportation, Montreal  
V. Mayer - Labour Relations Officer, St. Lawrence  
Region, Montreal

And on behalf of the Brotherhood Union:

G. Hall	- General Chairman, Quebec
D. Bouchard	- Local Chairman, Edmunston
P. Albert	- Yard Foreman, Edmunston
J. Martin	- Yardman, Edmunston
P. C. Hebert	- Grievor

#### AWARD OF THE ARBITRATOR

The grievor himself admits that he ran through a stop signal by approximately fifteen feet when he was in control of a yard locomotive on which brake shoes had been newly installed. At the investigation he stated that during the movement in question, the locomotive brakes were working effectively. The Arbitrator thus cannot accept the Brotherhood's claim, unsubstantiated by an expert witness, that the changing of the brake shoes contributed to the violation of Rule 292 by the grievor. Furthermore, the Arbitrator cannot accept that the locomotive engineer's ignorance of the exact number of cars he was pulling is a factor that mitigates the gravity of his error. It simply appears that he had not informed himself of the number of cars and that nothing was said to him about it.

The control of a train, whether in a yard or en route, demands the unremitting attention of the locomotive engineer. It appears to the Arbitrator that a locomotive engineer's most indisputable duty is to be able at all times to stop his train within the time frames and distances required for safety. Failure in this duty can, therefore, justify a most severe disciplinary penalty.

In this case, Mr. Hebert allowed his locomotive to run through a stop signal. It is true that he was aware of the signal, and applied the brakes of his locomotive to stop it. However, because of his inattention or poor judgement, the end of the locomotive ran through the signal by about fifteen feet, and the first wheel was approximately five feet beyond the signal. The evidence shows that he was definitely not stopped beyond the switch leading onto the main track, i.e. that Mr. Hebert was able to stop his train within the limits of the classification track.

The Arbitrator accepts the Company's claim that the grievor committed a serious error, and that there was just cause for a severe disciplinary measure. Moreover, the 40 demerit marks already in Mr. Hebert's record also constitutes a negative factor. In the circumstances, however, I consider that the dismissal of Mr. Hebert, an employee with some twelve years' service, is not merited. Given the specific circumstances surrounding the error of judgement by the grievor, a fairer penalty would be his demotion to the position of brakeman. The Arbitrator therefore orders that Mr. Hebert be reinstated, into the position of brakeman, with no compensation and no loss of seniority. I remain seized of this matter in the event of any dispute between the parties respecting the interpretation or implementation of this award.

May 13, 1988

(SGD) MICHEL G. PICHER  
ARBITRATOR