

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1785

Heard at Montreal, Thursday, 12 May 1988

Concerning

CANADIAN NATIONAL RAILWAY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of 30 demerit marks assessed the record of Locomotive Engineer Z. Baziuk of North Battleford, Sask. on 16 December 1983.

JOINT STATEMENT OF ISSUE:

Locomotive Engineer Z. Baziuk was ordered for Train 599 for 2200 hours at North Battleford on Thursday 15 December 1983. Subsequent to departure from the shop track, the engine bell on the leading locomotive 1061 failed. Repairs were attempted, however, due to inclement weather conditions the bell continued to fail. Locomotive Engineer Baziuk was instructed by a Company officer to sound the engine bell continuously on trailing locomotive 1063, and to depart North Battleford. Following repeated refusals by Locomotive Engineer Baziuk to depart, the Company officer removed him from service pending investigation.

Following an investigation, Locomotive Engineer Baziuk was assessed 30 demerit marks for "failing to follow instructions of a Company officer, while on duty as Locomotive Engineer, Train 599 (Extra 1061 East) Friday, December 16, 1983 and time held out of service to be counted as discipline."

The Brotherhood contends that the instructions of the Company officer were improper and not in compliance with the Operating Rules, Regulations and General Orders of the Railway Transport Committee. Locomotive Engineer Baziuk's refusal to obey the verbal instructions was based upon his desire to not violate the statutory requirements.

The Brotherhood contends that the discipline assessed was unwarranted and should be removed from Locomotive Engineer Baziuk's record and that he should be compensated for time held out of service.

The Company disagrees with the Brotherhood's contention.

FOR THE BROTHERHOOD:

(Sgd) P. SEAGRIS  
General Chairman

FOR THE COMPANY:

(Sgd) D. C. FRALEIGH  
Assistant Vice-President  
Labour Relations

There appeared on behalf of the Company:

L. A. Harms	- Labour Relations Officer, Montreal
J. R. Hnatiuk	- Manager, Labour Relations, Montreal
J. Torchia	- Labour Relations Officer, Winnipeg
D. Lussier	- Coordinator, Transportation, Montreal
D. C. St. Cyr	- Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

P. Seagris	- General Chairman, Winnipeg
G. Hall	- General Chairman, Quebec

#### AWARD OF THE ARBITRATOR

The material establishes that on the night in question Engineer Baziuk was in control of a power unit consisting of four locomotive engines. Because of the cold weather the signal bell was not functioning on the lead engine, nor on the two engines immediately behind it. It appears that only the fourth or trailing engine had an operative bell. That bell could not, however, be controlled from Locomotive Engineer' Baziuk's position in the lead locomotive.

In these circumstances the grievor refused to accept the order of Trainmaster D. E. Lussier to proceed out of the North Battleford terminal on Train 599's six hour run to Glaslyn. Train 599 was then in "true grain block" service, which consists of delivering, spotting and lifting cars at country grain elevators.

It is common ground that when the signal bell on the lead locomotive was not functioning Trainmaster Lussier instructed Engineer Baziuk that it would be sufficient if the engine bell on trailing locomotive 1063 was switched on prior to departure from North Battleford and left running during the entire trip. Locomotive Engineer Baziuk did not accept that that was a safe or lawful means of proceeding. The sole issue is whether the grievor was reasonable in refusing the order of his trainmaster, or whether the "work now - grieve later" principle should have governed in the circumstances.

It is well settled that, as a general matter, an employee is bound to carry out the instructions of his or her superior. If the employee believes the instruction to be erroneous, or in some way inconsistent with the provisions of the Collective Agreement, the normal course is for the employee to register the objection. Failing agreement to the employee's objection by the supervisor, the employee is under an obligation to carry out the instruction, obviously reserving the right to have the issue clarified subsequently through the grievance procedure. Implicit in "work now - grieve later" is a recognition that failure to adhere to that principle risks serious interference with normal production through work stoppages precipitated by potentially interminable debate.

There are, however, exceptions to the general rule. Where, for example, the employee has reasonable grounds to believe that the directive of his or her supervisor jeopardizes safety or involves a

violation of the law, refusal to carry out a supervisor's directive may be justified or, to put it differently, such refusal will not sustain the imposition of discipline for just cause. (See C.R.O.A. 510).

How do these principles apply in this case? The following provisions of the Uniform Code of Operating Rules govern the use of the engine bell:

- 30 The engine bell must be rung when an engine is about to move; while moving about stations; while passing a train standing on adjacent track; and 1/4 of a mile from every public crossing at grade (except within the limits of such towns or cities as may be prescribed in special instructions) until the crossing is occupied by engine or cars.
- 32 The unnecessary use of the whistle or the bell is prohibited. They will be used only as prescribed by rule or law, or to prevent accident.

General Order No. O-25 of the Board of Transport Commissioner for Canada, being Railway Engine Bell and Whistle Regulations under The National Transportation Act and The Railway Act provides, in part, as follows:

7. Each motive power unit capable of independent operation other than 'B' units shall be equipped and maintained with a bell of at least thirty pounds weight.

The requirement of operating whistles and bells on train engines is a safety requirement whose importance need not be elaborated. The sole issue in the instant case is whether the grievor, Locomotive Engineer Baziuk, had reasonable grounds to believe that the directive of Trainmaster Lussier, requiring him to proceed over the road with three locomotives without operative bells, including the lead locomotive, in circumstances where he would have no control over the operation of the bell ringing continuously in the fourth unit, would have placed him in contravention of the Uniform Code of Operating Rules and General Order No. O-25.

The Company submits that the directive of Trainmaster Lussier to leave the bell of the fourth unit ringing at all times during the entire trip of the grievor's train would have constituted compliance with U.C.O.R. Rules 30 and 32. In the Arbitrator's view it is not necessary to conclusively determine that issue for the purposes of this grievance. Suffice it to say that in the Arbitrator's opinion it is less than clear that it was necessary for the engines to proceed as the trainmaster required. To put it differently, it is at the very least arguable that in the circumstances that obtained leaving the bell on the fourth unit ringing continuously was an unnecessary use of that bell within the meaning of U.C.O.R. Rule 32. It was admitted by the Company's representative at the hearing that there was nothing to prevent the realignment of the locomotives, so that locomotive 1063 could have become the lead unit. In this case the problem was fully identified before the train left the North

Battleford terminal, and there was every opportunity, with little disruption to operations, to realign the engines. In those circumstances, given the available alternative of positioning the locomotive with the operating bell as the lead unit, thereby allowing the locomotive engineer full control of its operation, the Arbitrator finds it difficult to dismiss out of hand the possibility that the leaving on of the bell in the fourth locomotive did not constitute an unnecessary use of the bell within the meaning of U.C.O.R. Rule 32.

Honest persons may differ as to what is or is not "unnecessary" in a given circumstance. In the instant case however, the Arbitrator finds it difficult to question the belief of Locomotive Engineer Baziuk that to proceed in the manner in which he was directed by Trainmaster Lussier risked violating U.C.O.R. Rules 30 and 32. The legality of the Company's directive was doubtful and was arguably not the safest course available in the circumstances. (See C.R.O.A. 108) For these reasons I must conclude that the Company did not have just cause to discipline Locomotive Engineer Baziuk.

For the foregoing reasons the grievance is allowed. The thirty demerits assessed against the grievor shall be expunged from his record and he shall be fully compensated for wages and benefits lost in respect of the period for which he was held out of service. I retain jurisdiction in the event of any dispute concerning the interpretation or implementation of this award.

May 13, 1988

(SGD) MICHEL G. PICHER  
ARBITRATOR