

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1921

Heard at Montreal, Thursday, 11 May 1989

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Article 17.01.

JOINT STATEMENT OF ISSUE:

The Union grieves the discharge of two employees and the placement of 35 demerit marks on the record of a third employee.

The Union also grieves the investigation procedure which preceded this discipline.

The Railway claims to have respected the investigation procedure in all three instances and to have conformed with the Collective Agreement and maintains that in each case the discipline imposed is appropriate.

FOR THE UNION:

(SGD) B. ARSENAULT
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) A. BELLIVEAU
MANAGER, HUMAN RESOURCES

There appeared on behalf of the Company:

D. Manzo	- Counsel, Montreal
A. Belliveau	- Manager, Human Resources, Sept-Iles
K. D. Turiff	- Superintendent, Maintenance of Equipment, Sept-Iles
J. Y. Nadeau	- Superintendent, Transportation, Sept-Iles
P. Plante	- Witness
T. McKenzie	- Witness
C. Burns	- Witness
P. Caouette	- Observer

And on behalf of the Brotherhood Union:

C. H. Derossiers	- Counsel, Sept-Iles
B. Arsenaault	- General Chairman, Sept-Iles
B. Lebel	- Vice-General Chairman, Sept-Iles
R. J. Proulx	- Vice-President, UTU, Ottawa

N. Blackburn	- Grievor
P. Shuglo	- Grievor

AWARD OF THE ARBITRATOR

Firstly, the Arbitrator must declare that he can see no merit to the claim by the Union that the Company's investigation procedure was not in accordance with the terms of Article 17.01 of the Collective Agreement. There is nothing in the words or in the spirit of this article which prevents the Company from convening a supplementary investigation, unless it is done in an abusive fashion, which is not the case here. Furthermore, I cannot see in the evidence a departure from Article 17.08, as it is admitted that the locomotive engineer did not communicate to the Company any intention to insist upon his rights, which I judge to be directory and not mandatory, to be present for the removal of the speed recorder tape from the controlling locomotive following the derailment of his train.

Most of the pertinent facts are not in dispute. The evidence establishes that on 3 February 1989, the slave unit assisted ore train, PL-051, southbound for Sept-Iles, partially derailed at Mile 119.8 in the vicinity of Dufresne Lake. It is not contested that a few minutes prior to this incident the train had passed over a section of track at Mile 120 at a speed in excess of the 20 mile per hour limit as stipulated by a permanent slow order issued by the Company for this area.

The Company does not claim that the speed of the train necessarily caused the derailment. It is accepted that the precise cause of this event remains unknown. Nevertheless, the Company imposed a disciplinary penalty on the three members of the train crew, solely because of the fact that they did not honour the indicated speed limit, and that the speed of the train would have aggravated the damages caused by the derailment. In consequence, the locomotive engineer, Mr. Percy Shuglo, and the conductor, Mr. Neil Blackburn, were discharged and Mr. Marius Bouchard, the brakeman, received a penalty of 35 demerit marks.

According to the speed recorder tapes entered in evidence, it would seem that the train was moving at a speed of 26 miles per hour when the head-end locomotive reached Mileage 120, near South Dufresne. The train was about one and one-half miles in length and had two locomotives towards the rear of the train under the control of a remote control device or "slave unit". Mr. Shuglo had reduced the speed regulator which controls the power of the rear locomotives to the "1" position, that is the maximum reduced power possible, while the speed regulator controlling the head-end locomotive was at position "8", that is to say at maximum power.

It is agreed that the permanent slow order flags placed at Mile 120 were not installed to protect the track but rather to warn of problems with the coupling system of the train which, in the past, had often caused breaks in the connections of the cars. This is caused by the effect of the topography of the track at this spot. The slow order applies only to robot assisted trains, such as the

train in the case in point.

It is clear from the evidence that the handling of locomotive units at the approach to Mile 120 was made the subject of discussions on several occasions between the locomotive engineers and the Company's Road Foreman of Engines. The evidence of Mr. Shuglo, supported by that of Mr. Clarence Burns, Road Foreman of Engines, reveals that the Company's directive communicated to Mr. Shuglo during a number of trips made in the company of the road foreman was to the effect that at the approach to Mile 120 it was an accepted practice to reduce the power in order to reduce the speed of the train to about 23 miles per hour, and that when the engineer was satisfied that the stress was being absorbed over the entire length of the train, he could then return to maximum power and speed, which is about 28 miles per hour. The effect of this manoeuvre was that the rear section of the train passed over Mile 120 at an effective speed significantly in excess of the 20 mile per hour limit posted. Mr. Burns, whom the Arbitrator judges to be an expert witness of impeccable honesty, admitted that such a practice over that section of the track would be permissible and in line with his directives. He admits, moreover, that the handling of a robot assisted train in these circumstances requires a certain judgement on the part of the engineer, in view of the fact that trains can react in different ways depending on their speed, length and total weight. Mr. Burns indicated, however, that the information drawn from the tachometer indicated an error in judgement on the part of Mr. Shuglo in as much as he does not seem to have sufficiently reduced the power of the head-end locomotives at the time of his approach to Mile 120.

In the circumstances of the incident in question, the Arbitrator has some difficulty accepting the position of the Company to the effect that the error of judgement by Mr. Shuglo justified his dismissal. A locomotive engineer with 21 years' service and a clear discipline record, he committed the error of reducing the speed of his train to 26 miles per hour rather than the 23 miles per hour in conformance with the directives of his road foreman. Although Mr. Shuglo remains responsible for his error, in view of the fact that a certain discretion in the judgement of the engineer is accepted by the Company and that he had taken some measures to slow down his train and avoid the danger of excessive stress. The difference of 3 miles per hour in the speed of his train shows an error of judgement deserving of disciplinary sanction, but of a measure less severe than discharge. The Arbitrator orders, therefore, that Mr. Shuglo be reinstated immediately into his duties, without compensation for his loss of wages and benefits, and without loss of seniority, with a suspension registered to his record which corresponds to the period of time elapsed between his discharge and his return to work.

Given the circumstances, and above all the fine point of judgement on the part of the locomotive engineer who was in charge, the Arbitrator cannot, however, accept the Company's treatment of Mr. Blackburn and Mr. Bouchard. They are employees of 23 years' and 22 years' service respectively, both with clear disciplinary records. At the time of the infraction Mr. Blackburn was located in the second locomotive in which the speed recorder did not work. While acknowledging the overall responsibility of a conductor for the speed of his train, I cannot conclude that Mr. Blackburn would have been able to be

sensitive to the subtle difference in speed of the train or to the error of judgement of Mr. Shuglo in the space of those few minutes in question. I am equally persuaded that Mr. Bouchard was not in all likelihood in a position to judge the efficacy of the manoeuvre of his locomotive engineer, who was better qualified than himself and as well was in a better position to predict the probable reaction of his train at the approach to the slow order at Mile 120.

For these reasons, the Arbitrator must accept the position of Counsel for the Union to the effect that the Company did not have just cause to impose the slightest disciplinary sanction with respect to Mr. Blackburn or Mr. Bouchard. For these reasons, I order that they be reinstated into their duties, without loss of salary, benefits or seniority.

I remain seized of these grievances to resolve any dispute which may arise concerning the implementation of this award.

May 12, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR