

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1941

Heard at Montreal, Tuesday, 12 September 1989

Concerning

CANADIAN PACIFIC LIMITED

And

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Dismissal case of Conductor G.A. Hayden, Sutherland, Saskatchewan, February 4, 1988.

UNION'S STATEMENT OF ISSUE:

On February 4, 1988, Conductor G.A. Hayden:

(a) was assessed 40 demerits for failing to ensure Extra 5986 South was being operated at a speed that would permit stopping within one-half of the range of vision within yard limits, Regina, violation of UCOR Rule 93, Paragraph 2, Mile 6.3, Lanigan Subdivision, January 15, 1988.

(b) was assessed 30 demerits for permitting Extra 5986 South to operate at speeds in excess of Time Table permanent slow orders on curves between Mile 13.0 and 25.0 and between Mile 0.0 and 7.6, Lanigan Subdivision, January 15, 1988.

(c) was dismissed for accumulation of demerit marks.

The Union appealed the discipline and dismissal on the following basis:

(a) Conductor Hayden took all reasonable steps to ensure the train was travelling within the permanent slow order speeds; given, amongst other matters, the time of day, nature of the terrain, nature of the train, the requirements of his other duties and the absence of a speedometer in the caboose.

(b) as Conductor Hayden was located in the caboose he had no way of ascertaining what speed would be necessary to comply with Rule 93 regarding restricted speed.

(c) in essence Conductor Hayden received two (2) sets of demerit marks for one alleged set of facts, that is, alleged excess speed of the train.

The Union requested that Conductor Hayden be returned to service with

all rights, full compensation and benefits. In the alternative, the Union requested that the discipline and discharge ought to be mitigated against in view of all of the circumstances of this case.

The Company denied the appeal.

FOR THE UNION:

(SGD) W. M. JESSOP  
GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. D. Huxtable	- Assistant Supervisor, Labour Relations, Vancouver
D. A. Lypka	- Supervisor, Labour Relations, Vancouver
B. Scott	- Labour Relations Officer, Montreal

And on behalf of the Union:

W. M. Jessop	- General Chairman, Calgary
B. L. McLafferty	- Vice-General Chairman, Calgary
I. Robb	- Secretary, GCA, Thunder Bay
B. Marcolini	- Vice-President, Ottawa
R. J. Proulx	- Vice-President, Ottawa
G. A. Hayden	- Grievor

#### AWARD OF THE ARBITRATOR

On January 15, 1988 the grievor's train, Extra 5986 South from Sutherland to Regina over the Sutherland and Lanigan Subdivisions, collided with the tail end of a Regina Yard Engine movement within the yard limits of Regina, resulting in the fatalities of the engineman and trainman at the head end of Mr. Hayden's train. It is not disputed that the cause of the accident was train Extra 5986 South failing to observe the requirements for restricted speed in yard limits and a permanent slow order of twenty-five miles per hour from Mileage 7.6 on the Lanigan Subdivision to Regina.

The material establishes beyond dispute that throughout the entirety of the trip, Extra 5986 South committed serious speed violations. For example, at Mileages 24.6 and 24.3 of the Lanigan Subdivision the train, which was 6,206 feet long, travelled through two curves at forty-one miles per hour, or sixteen miles per hour in excess of the permissible track speed.

Notwithstanding his considerable experience on the subdivision, Conductor Hayden failed to monitor the speed of his train and took no notice of the obvious overspeed of his train. By his own admission he made only one check of the speed of the train during the entire trip between Sutherland and Regina, utilizing his watch and the track-side mile posts.

As the grievor's train approached the yard limits at Regina, it was

again travelling at a substantial excess of speed. At Mileage 7.6 of the Lanigan Subdivision, where the permissible track speed changes to twenty-five miles per hour the head end of Extra 5986 was travelling at fourteen miles per hour over the limit. An overspeed of nine miles per hour was still in effect when the grievor's caboose crossed the same point.

Once inside the Regina Yard limits the grievor's train movement was subject to UCOR Rule 93, the second paragraph of which provides:

Third class, fourth class, extra trains and engines  
must move within yard limits at restricted speed  
unless the main track is known to be clear.

It is common ground that restricted speed means a speed which would allow the movement to be stopped within half the range of vision from its head end. Subsequent tests disclose that the permissible speed for the grievor's train at the point of collision in the vicinity of Mileage 6.3 was ten miles per hour, and that in fact Conductor Hayden's train was operating at thirty four-miles per hour, an excess of speed which clearly contributed to the tragic collision which took the lives of two employees.

It should be emphasized that the grievor's actions did not directly cause the collision. Only the head end crew could judge the operating visibility and determine the appropriate restricted speed at any given time. On the other hand, just as had been the case with the curves on the Lanigan Subdivision, the grievor was charged with the ongoing duty to monitor the speed of his train and should reasonably have known, even without recourse to his watch and mile posts, that his train was travelling close to ten miles per hour in excess of the maximum speed permissible after Mileage 6.7. In other words, while it is true that Mr. Hayden was not in a position to judge the application of UCOR Rule 93 within the yard limits, he nevertheless had an obligation to monitor the speed of his train and should have known that it was moving at close to ten miles per hour more than the maximum speed possible, which was twenty-five miles per hour.

In fact the Union does not dispute that some measure of discipline was appropriate. The only question to be resolved is the appropriate measure of discipline. In approaching that issue the Arbitrator is mindful of the following comment found in CROA 690:

The extent of the damage is not in itself an  
element to be considered in assessing the grievor's  
conduct - just as, in Case No. 494, the fact that a  
fatality occurred was not such a factor. Rather, it  
is a question of the employees' compliance or  
otherwise with the rules and general seriousness,  
or degree of risk, of their conduct.

Conductor Hayden clearly violated his responsibility for the overall safety of his train and the observance of the operating rules found within Rule 106 of the UCOR. At the time of this unfortunate incident he had twelve years' service and a disciplinary record of forty-five demerits. On five previous occasions he was assessed

discipline for violating operating rules. At a minimum, in these circumstances, the imposition of fifteen demerits would be well within the appropriate range of discipline to be assessed against Mr. Hayden, quite apart from whether a total of seventy demerits was strictly justifiable. In all of the circumstances, therefore, I can see no basis to reverse the decision of the Company to terminate the grievor's employment nor any mitigating factors that would justify a substitution of penalty.

For the foregoing reasons the grievance must be dismissed.

September 1, 1989

(Sgd.) MICHEL G. PICHER  
ARBITRATOR