

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1967

Heard at Montreal, Tuesday, 14 November 1989

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Dismissal of Leading Track Maintainer, C.R. Courtemanche, Chapleau, Ontario.

BROTHERHOOD'S STATEMENT OF ISSUE:

On December 16, 1987, Mr. C.R. Courtemanche was informed that his record had been debited with 60 demerit marks for "failure to remind your Foreman of contents of line-up and failure to obtain supplementary line-up information to establish the location of Work Extra 4239, a violation of Form 568, Maintenance of Way Rules and Instructions Train Line-up Regulations 1.4 and 1.6, resulting in motor car colliding with Work Extra 4239 at Mileage 4.2, White River Subdivision, on November 17, 1987," and that Mr. Courtemanche had been dismissed for accumulation of demerit marks.

The Union contends that Mr. Courtemanche did not violate Train Line-up Regulation 1.4; the discipline assessed is too excessive and not warranted; Mr. Courtemanche was discriminated against compared to other employees in similar incidents on the Canadian Pacific Railway.

The Union requests that Mr. Courtemanche be reinstated with full seniority and be paid all lost wages.

The Company denies the Trade Union's contentions and declines payment.

FOR THE BROTHERHOOD:

(SGD) D. LACEY  
for: SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

P. O'Donoghue	- Assistant Supervisor, Labour Relations, IFS, Toronto
B. Mittleman	- Counsel, Montreal
L. G. Winslow	- Labour Relations Officer, Montreal

B. Butterworth - Assistant Supervisor, Labour Relations, IFS  
Toronto  
G. McBurney - Supervisor, Labour Relations, IFS Toronto  
K. King - Roadmaster, Belleville

And on behalf of the Brotherhood:

M. Gottheil - Counsel, Ottawa  
D. Lacey - General Chairman, Ottawa  
R. Della Serra - General Chairman, Boisbriand  
L. DiMassimo - Secretary/Treasurer & Federation General  
Chairman, Ottawa

#### AWARD OF THE ARBITRATOR

It is admitted that the grievor, while occupying the position of Leading Track Maintainer and in the company of Track Maintenance Foreman Menezes, proceeded westward on a motor car near Mileage 4.2 on the White River Subdivision, notwithstanding knowledge of a train line-up which had informed both men of the oncoming presence of Work Extra 4239 travelling eastward. Mr. Menezes failed in his obligation to obtain additional line-up information respecting the specific whereabouts of the train and as a result a collision occurred between the train and the track motor car at Mileage 4.2, causing the demolition of the motor car. Fortunately both employees jumped clear and were not injured.

The grievor was assessed sixty demerits for a violation of regulations 1.4 and 1.6 of Form 568, Maintenance of Way Rules and Instructions, Train Line-up Regulations. Those regulations are as follows:

- 1.4 A Light Track Unit (machine and/or equipment that can be removed promptly from the track by the employee(s) accompanying it) may be operated under these Line-up Regulations and the person in charge of the track unit must be in possession of a current Broadcast Line-up or Individual Line-up and must obtain Supplementary Line-up information on all possible occasions in regard to the movement of trains.
- 1.6 Employee(s) who are aware of the contents of a Line-up must if necessary, remind the employee in charge of its contents.

The Arbitrator must agree with the contention of the Brotherhood that insofar as Mr. Menezes, and not Mr. Courtemanche, was in charge of the operation of the motor car, no violation of Regulation 1.4 on the part of the grievor is disclosed. That provision speaks to the duty owed by the "person in charge of the track unit". In the circumstances, therefore, it was the first obligation of Mr. Menezes to obtain Supplementary Line-up information in regard to the movement of Work Extra 4239.

By the same token, as the Brotherhood concedes, Mr. Courtemanche plainly violated Regulation 1.6. When he knew or reasonably should

have known that the motor car was proceeding westward without sufficient information as to the whereabouts of the Work Extra, he was under a duty to bring that fact to the attention of Mr. Menezes who could then, by means of a portable radio, have obtained information or instructions which would have averted the collision which did take place. In a sense, therefore, while Mr. Menezes can be said to have caused the collision by his failure of duty, the error of Mr. Courtemanche constituted a failure to take action which would have avoided the unfortunate outcome.

The difference between the obligation of Mr. Courtemanche and that of Mr. Menezes is arguably not without some significance. While exact analogies are impossible, their respective duties may be roughly compared to the duty of an engineman or conductor on the one hand, and a trainman or brakeman on the other hand, in respect of the observation of operating rules in the movement of a train.

The Brotherhood stresses that the Company did not make sufficient allowance for the distinction in the degree of duty of the two employees in the instant case. Mr. Courtemanche was in fact disciplined at a level which is normally reserved for a train line-up error made by a Track Maintenance Foreman.

There are, as well, other arguably mitigating factors. It does not appear disputed that the incident might have been avoided if the radio installed in the track motor car had not been inoperative. Because it was not working, in keeping with standard Company procedure the grievor and his foreman were travelling with a small portable radio set. It appears that a call made to them by a third crew member, which would have alerted them to the situation, and which would have been clearly heard on the louder speaker of the track motor car radio, was not in fact heard. An incoming call on the small portable radio would, in all probability, not be heard over the noise of the moving track motor car.

However, there are also aggravating circumstances to be weighed, particularly in respect of Mr. Courtemanche's record. In July of 1987 Mr. Courtemanche, acting as Track Maintenance Foreman, was involved in a similar track motor car collision when he forgot about a train which was on the line-up which had been provided to him. That incident resulted in thirty demerits which stood on his record at the time of the incident giving rise to this grievance.

In approaching the appropriate measure of discipline in this case, the Arbitrator cannot disregard the genuine concern which the Company must have for safe operations. Even allowing for the mitigating factors reviewed above, the uncontroverted fact is that the grievor bears a substantial measure of responsibility for two track motor car collisions within the space of a few months in 1987. Either of these events could have involved fatalities. Both did involve a substantial loss of Company equipment.

In my view the gravity of these events ultimately overrides the mitigating factors which the Brotherhood has sought to emphasize. While I agree that Mr. Courtemanche should not have been assessed any discipline in respect of Regulation 1.4, I am not persuaded that, in light of his prior record, his failure to discharge his obligation in

respect of Regulation 1.6 should not have attracted, at a minimum, thirty demerits. As that would, in the Arbitrator's opinion, have been within the appropriate range of discipline, the grievor would not have been saved from a dismissable position.

For all of the foregoing reasons the grievance must be dismissed.

November 17, 1989

(Sgd.) MICHEL G. PICHER  
ARBITRATOR