

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1982

Heard at Montreal, Thursday, 14 December 1989

Concerning

CANADIAN PACIFIC LIMITED

And

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of 30 demerits assessed Conductor P. West of Toronto for failing to promptly arrange movement of disabled car to clear main track, and for failure to carry out direct instructions of supervisor to clear main track.

JOINT STATEMENT OF ISSUE:

Conductor West was working Conductor's position on Extra 5587 West on November 11, 1988 when an empty tri-level car, some thirty cars back from the headend of his train, became disabled. After inspecting the car he informed the train dispatcher that a qualified car inspector was required.

After a C.P.R. car inspector examined the disabled car, he authorized movement of the disabled car to Bowmanville at 2 miles per hour. Additionally, Conductor West was instructed by Assistant Superintendent S. Seeney to put the disabled car in the clear at Bowmanville and clear his train at Darlington.

Conductor West refused to move the disabled car resulting in the main track being tied up and delays to trains.

Upon his arrival at his home terminal, Conductor West was taken out of service for investigation. Subsequently, Mr. West's record was debited with thirty demerit marks.

The Union contends that the discipline was unwarranted, and requested that it be removed and Conductor West be paid for all time lost.

The Company denied the Union's request.

FOR THE UNION:

(SGD) J. R. AUSTIN  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) N. R. FOOT  
for: GENERAL MANAGER, IFS

There appeared on behalf of the Company:

P. E. O'Donohue - Assistant Supervisor, Labour Relations,

	IFS, Toronto
G. W. McBurney	- Supervisor, Labour Relations, IFS, Toronto
B. P. Scott	- Labour Relations Officer, Montreal
F. O. Peters	- Labour Relations Officer, Montreal

And on behalf of the Union:

J. Austin	- General Chairman, Toronto
B. Marcolini	- Vice-President, Ottawa
J. Shannon	- Vice-General Chairman, Montreal
P. West	- Grievor

#### AWARD OF THE ARBITRATOR

The material establishes that Conductor West was in control of Extra 5587 West from Smiths Falls to Toronto on November 11, 1988, pulling forty-one loaded cars and fifty-four empties. The train developed a hot box on an empty tri-level automobile carrier car at approximately 1940 hours at Mile 161 of the Belleville Subdivision. After an initial inspection by Trainman Banfield, and an attempt to move the car for a short distance, the train was stopped to allow Conductor West an opportunity to observe the wheel which was causing the problem. As the grievor's train was stopped on the main line, the delay was of serious consequence to train movements generally.

At 2000 hours Trainman Banfield advised the dispatcher by radio that 5587 West had a hot box problem. The train was then some two miles from the Bowmanville siding. The communication between Conductor West and the dispatcher some minutes later indicates that the grievor felt that it would be appropriate to try to pull the car up to that location to try to set it off. At 2040 hours Conductor West advised Locomotive Engineer Norton by radio that in his view the only thing that the crew could do was to pull the car away from the train and pull it to the nearby roadway level crossing. He stated that in his view there would be no point in trying to take it further, over the two to three mile distance to Bowmanville. Conductor West specifically expressed his fear about having to cross a bridge on that stretch of road. Accordingly the car was moved to the crossing at Mileage 162.9 under Conductor West's direction, on the understanding that the crew would wait for someone to come and inspect it.

At 2041 Conductor West advised the dispatcher that one of the bolts on the wheel had sheared off, and that in his view it was risky to move the car any distance, and in particular "I don't want to go over the bridge the way it is right now." At 2146 the grievor again communicated by radio with the Belleville dispatcher. He then confirmed that the disabled car had been moved to crossing 162.9. The dispatcher then told him that a carman was coming to the site, without any tools "... to give a professional opinion on whether that can go into the siding at Darlington." Mr. West then responded "I'm sorry if he gives us authority to move the car he will take responsibility to try and move it." The dispatcher then responded "Yeah, okay."

The record of radio communication between the dispatcher and the grievor further reveals that Mr. West had concern for booking rest, and for obtaining a relief crew. When he first reported the hot box he instructed the locomotive engineer to advise the dispatcher that he would be booking rest as it was his right to do on three hours' notice. Later, at approximately 2201 he communicated further with the dispatcher, indicating that there would be a delay of at least a couple of hours, and that if the dispatcher could get a cab to the location with another crew it would make things much easier. Much of the communication that followed concerns the relaying of instructions to facilitate getting a cab to the grievor's crew at the Lamb's Road crossing.

The carman, Mr. Dereschewitz, arrived on the scene at approximately 2249 hours. The recorded radio discussion among the crew at about that time was largely in relation to locking up their train in preparation for leaving it. At 2259 Mr. West reminded the dispatcher that his crew had booked for relief, giving three hours' notice, at 2000 hours. The dispatcher responded that a taxi was being sent for the crew, but that they had to get their train off the main line. When the dispatcher explained that a relief crew was not on its way because someone from the Car Department was supposed to be on site, Mr. West responded "That is not my concern, Dispatcher. I gave three hours' notice, when this started, and I also told the dispatcher that it would take at least two hours to get this fixed."

Shortly thereafter, at 2323 Engineman Norton advised the dispatcher that the carman sent to the location by the Car Department had inspected the hot box and advised that the car was "... okay to go to Bowmanville at 2 miles per hour." However, within two minutes Conductor West advised Locomotive Engineer Norton to tell the dispatcher that the crew was boarding the taxi which had reached the site and were heading for Toronto Yard. The dispatcher responded to Mr. Norton that the crew should not abandon the train. At 2339, after the carman had departed, the Chief Dispatcher issued a firm directive to the crew of Extra 5587 West that they were to remain with their train.

The record further reveals that at 2345 Mr. West was instructed through the dispatcher that Assistant Superintendent Seeney had issued the directive for the crew to move the disabled car to the Bowmanville Siding to be set off, and for the train to be put away at Darlington. Mr. West did not comply with that instruction. The same directive was relayed at 0006 hours on November 12, and was again ignored.

The material establishes to the Arbitrator's satisfaction that the grievor's train found itself disabled by a hot box while travelling on the main line. This created a situation of some urgency, as keeping the main line clear was of obvious importance to the Company's operations, a fact of which the grievor was well aware. Shortly after 2300 hours the hot box had been inspected by a qualified carman who expressed the firm opinion that the car could be moved to the Bowmanville Siding. Notwithstanding that direction, or the subsequent orders of Assistant Superintendent Seeney communicated to him at least twice, Conductor West steadfastly refused to move the

car to the Bowmanville Siding.

In reviewing the material the Arbitrator is left in substantial doubt as to whether Mr. West had a reasonable basis for any safety concerns after the inspection of the car by the carman. The statement of Carman Dereschewitz makes it clear that in his opinion there was no serious risk of the wheel collapsing if the car was moved the two mile distance to Bowmanville at the prescribed speed of two miles per hour. He denies the assertion of Conductor West that he told the Conductor that the wheel was liable to collapse at any time.

On balance, the Arbitrator is inclined to accept the statement of the carman. While the record discloses that initially Mr. West expressed concerns about walking the disabled car the two mile distance to Bowmanville, particularly because of a bridge that must be crossed, there was, in my view, no objective basis for continuing to entertain that concern after the inspection of the hot box by the carman. Nor did Mr. West have any reason to be concerned for the consequences of attempting to move the car, since the responsibility for that decision would have been shared by the carman and Assistant Superintendent Seeney.

This Office has consistently recognized the importance of safety, and the right of employees to refuse to perform unsafe work when they have reasonable and probable cause to do so. (See CROA 1665 and 1759.) After a careful review of the material before me, however, I am satisfied that that is not an operative concern in the instant case. Mr. West was told by a qualified carman that it was safe to move the disabled car to the Bowmanville Siding and was thereafter twice directed to do by the assistant superintendent responsible for his train's movement. He refused, and in doing so did not communicate any concern about the safety of what he was directed to do. As the radio transcript reveals, the greater preoccupation of Mr. West seemed to be the delay and inconvenience to his crew, and leaving the site as soon as possible in the taxi which had been sent for them. Given the urgency of the situation, I must accept the position of the Company that the grievor's first obligation was to move the disabled car as he was advised to do by the carman, even if doing so would have required additional time on duty. There is no evidence before me to establish that Mr. West and his crew were not in a fit condition to travel the two mile distance to the Bowmanville Siding, or that the car was not able to make it. The preponderance of the evidence before me is manifestly to the contrary.

For the foregoing reasons the Arbitrator concludes that the grievor was deserving of discipline as a result of his actions. In assessing the appropriate measure of discipline, however, some weight must be given to the grievor's length of service and the very positive quality of his record. Since he was hired in January of 1969 Mr. West has been disciplined for relatively minor infractions on only two occasions, and had a clear record at the time of this incident. In my view, given that record of some twenty years' good service, twenty demerits would be more appropriate as a disciplinary response in the circumstances. For these reasons the grievance is allowed, in part. The disciplinary record of Conductor West shall be revised to reflect the assessment of twenty demerits in substitution of the thirty demerits assessed by the Company.

December 15, 1989

(Sgd.) MICHEL G. PICHER  
ARBITRATOR