

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2017

Heard at Montreal, Wednesday, 11 April 1990

Concerning

CANADIAN PACIFIC LIMITED

And

RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Dismissal of Operator P.D. Sullivan, Smiths Falls, Ontario.

JOINT STATEMENT OF ISSUE:

On March 30, 1988, Operator Sullivan was working the midnight shift (0001 to 0800) at Smiths Falls. During this tour of duty, he was called upon to copy an M.B.S. Clearance for train Extra 4211 West. This clearance, numbered 17, showed bulletins 673, 678, 684, 687, 700, 706, 712, 714, 728, 733 and 734 in effect. Operator Sullivan handed this clearance to the Conductor on the Extra 4211 West and was advised by the Conductor that Bulletin No. 728 was missing.

After looking for the bulletin and being unable to contact the Dispatcher who was busy issuing a line-up, Operator Sullivan explained to the crew that to the best of his knowledge Bulletin 728 did not exist. The reference to Bulletin 728 was deleted from the clearance.

Operator Sullivan was instructed to appear at a Company investigation into this incident following which he was dismissed from Company service.

The Union contends that the discipline assessed Operator Sullivan is too severe and should be reduced.

The Company contends that the discipline is appropriate.

FOR THE UNION:

(SGD) D. H. ARNOLD  
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD) E. S. CAVANAUGH  
GENERAL MANAGER  
OPERATION & MAINTENANCE, 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  
P.E. Timpson -- Labour Relations Officer, CP Rail, Montreal

And on behalf of the Union:

D. H. Arnold       -- General Chairman, Winnipeg  
M. Trepanier       -- Local Chairman, Smiths Falls  
P. Sullivan        -- Grievor

#### AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, without contradiction, that the grievor's actions resulted in the crew of Extra 4211 West proceeding on their run in ignorance of the fact that a track maintenance crew was engaged in the removal and replacement of rail at Mileage 105 of the Chalk River Subdivision. Fortunately the maintenance crew foreman overheard the head end and tail end of the approaching train communicating with each other on his radio. He then advised them of his UCOR Rule 42 protection, whereupon they contacted the dispatcher and received a reissued bulletin to replace Bulletin 728 which had been lost by the grievor and improperly struck from the MBS clearance which he had given to the crew of Extra 4211 West.

What the evidence reveals is that upon leaving Smiths Falls the train's crew was handed a clearance by Operator Sullivan which listed Bulletin 728. That bulletin, however, was missing from the material given to the Conductor. When the crew inquired of Operator Sullivan he searched his office for a copy of the bulletin and was unable to find any. Because the dispatcher was then occupied in a radio communication, Mr. Sullivan did not wait to check with the dispatcher, who had his own copy of Bulletin 728. Rather, without any basis to do so, he formed the opinion that there must not be a Bulletin 728, and so advised the train crew. He then snow painted the reference to Bulletin 728 from the MBS clearance, which he returned to the crew.

In fact Bulletin 728 referred to the Rule 42 protection of the track maintenance crew working on the Chalk River Subdivision. It required the train to proceed at reduced speed when approaching the area, and to come to a stop and not proceed beyond the designated signal until instructed to do so by the foreman named in the order. Needless to say, a freight train proceeding at full speed in ignorance of track maintenance operations, which could involve sections of track that have been removed or heavy equipment obstructing the road, can have disastrous consequences. As it happens, by chance the approaching train was overheard by the foreman, and conditions were such that it could pass safely.

The Company expresses concern not only about the grievor's failure to communicate Bulletin 728 to the train's crew, and Mr. Sullivan's admitted violation of the rules by making an alteration to the MBS clearance which he gave to them. According to its representative the gravest concern arises from the separate fact that the grievor, who had a discrepancy in the bulletins drawn to his attention, did not hold the train until the uncertainty about Bulletin 728 was resolved, but rather surmised, without any basis in fact, that there must be no such bulletin in existence. In the Company's view, that action strikes at the fundamental basis of trust implicit in the continued responsibilities of an operator.

The Union suggests that the working conditions at Smiths Falls and pressures on an employee in the position of the grievor conduced in some measure to causing him to make the error which he did. The Arbitrator has substantial difficulty accepting that explanation in the circumstances of this case. The evidence does not disclose an employee misreading or miscalculating a piece of information in a hurried moment. On the contrary, it is uncontroverted that Operator Sullivan was consciously faced with a clear discrepancy between the contents of the MBS clearance which he had himself prepared and given to the train crew, and the bulletins which were in their possession. On the face of it a bulletin appeared to be missing, the content of which could be crucial to the safe movement of the crew's train. Because he could not find the bulletin in a brief search of his own office, Mr. Sullivan made no further attempt at verification, altered the MBS clearance contrary to established procedure and released the crew on a trip fraught with great potential peril. In my view the error of the train crew in accepting the altered clearance is substantially less serious than the grievor's conscious act of misinformation.

The grievor has been employed for seven and one-half years, and cannot be characterized as an employee of long service. While his disciplinary record is not bad, the gravity of his conduct in the instant case must be given full consideration in assessing the appropriateness of the discipline imposed by the Company. In the Arbitrator's view it is difficult not to accept the characterization of the grievor's actions as a deliberate disregard of safety. There is in the quality of the actions of Mr. Sullivan an element of negligence, if not recklessness, which seriously calls into question his ability to be entrusted with the safety sensitive responsibilities of an operator. I find it impossible to conclude that Company's decision to terminate his services was not justified in the circumstances.

For the foregoing reasons the grievance must be dismissed.

April 12, 1990

(Sgd.) MICHEL G. PICHER  
ARBITRATOR