CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2020

Heard at Montreal, Thursday, 12 April 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of the 40 demerits and the resultant discharge for accumulation of 70 demerits, assessed to the record of Mr. T.D. Moore, Locomotive Engineer, Sarnia, Ontario, for a violation of Rule 105 of the Uniform Code of Operating Rules on 3 May 1989.

JOINT STATEMENT OF ISSUE:

On May 3, 1989, the grievor reported for duty as the Locomotive Engineer on the 1330 CIL yard assignment. At approximately 1400 the grievor's assignment departed the "C" Yard at Sarnia and headed south along the St. Clair River Industrial Spur destined for the CIL plant at Courtright. At approximately 1415 the grievor's assignment was involved in a head-on collision with another yard assignment, the 0900 Roustabout.

An investigation into the accident determined that the grievor's assignment, the 1330 CIL yard assignment, had failed to comply with UCOR 105, which requires trains or engines on other than the main track to proceed at restricted speed (a speed which permits stopping within half the range of vision).

As a result, the grievor was assessed 40 demerit marks for his responsibility in the collision. In addition, the grievor was discharged for accumulation of demerits as his record then stood at 70 demerit marks.

The Brotherhood has grieved the severity of the discipline and the resultant discharge, contending that the braking system on the assignment contributed to the accident and should therefore be considered a mitigating factor. It requests the discipline be reduced to 25 demerits and that the grievor be reinstated without loss of wages, seniority or benefits.

The Company disagrees.

FOR THE BROTHERHOOD:
(SGD) J. D. PICKLE
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD) M. DELGRECO
for: ASSISTANT VICE-PRESIDENT
LABOUR RELATIONS

There appeared on behalf of the Company:

S. F. McConville -- Labour Relations Officer, Montreal
M. Delgreco -- Director, Labour Relations, Montreal
M. Hughes -- Labour Relations Officer, Montreal
M. S. Fisher -- Co-Ordinator, Transportation, Montreal
A. Heft -- Manager, Labour Relations, Toronto
J. Krawec -- Transportation Officer, Toronto
M. Lachance -- Trainmaster, Sarnia
H. Moxam -- Master Mechanic, Sarnia
J. Gussow -- System Transportation Engineer, Montreal

And on behalf of the Brotherhood:

J. D. Pickle -- General Chairman, Sarnia
C. Hamilton -- Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

The facts of the instant grievance were extensively reviewed in CROA 1981, and need not be reiterated here. The Arbitrator is satisfied on the basis of the material before him that Locomotive Engineer Moore was gravely negligent in both monitoring the speed of his train and being vigilant for oncoming movements in the curve on the St. Clair River Industrial Spur at approximately 14:15 hours on May 3, 1989. The resulting collision, which caused extensive economic loss as well as serious personal injuries, was the direct result of Mr. Moore's violation of UCOR Rule 105.

The grievor's train collided with the 0900 Roustabout on the curve shortly after Mileage 1.9. The Brotherhood argues the inadequacy of the sight lines at that location and the limitations of the engine's braking system. Neither of those submissions is, in my view, compelling in the circumstances of this case. It is uncontroverted that the crew of the 0900 Roustabout had no difficulty either seeing the oncoming movement controlled by Mr. Moore, or coming to a full stop prior to the collision. It may be noted that the braking system on the 0900 Roustabout is identical to the system on the grievor's unit. It is also clear from the evidence that as soon as Mr. Moore looked up and saw the other train he applied the emergency brakes of his locomotive and immediately jumped from his cab. From that conduct it may be inferred that Mr. Moore realized that the distance between the two movements was so short that a collision was inevitable, no matter how well the brakes might perform. In other words, his own inattention placed his movement in a position from which it could not be saved by the normal operation of the braking system.

The collision which resulted lead to the discharge of both the grievor and Yard Foreman S.P. Greenwood, who was also in the cab of the grievor's locomotive unit. For the reasons related in CROA 1981, the discharge of Mr. Greenwood was sustained. The Arbitrator can see no compelling basis for any different conclusion in the instant case. By any standard, Mr. Moore was no less responsible than Mr. Greenwood for what occurred, and was in fact in a better position to monitor oncoming movements prior to the point of collision. Additionally, Mr. Moore's disciplinary record is not favourable, as he was involved in a previous infraction involving a dangerous and unauthorized train

movement on a main line. While that infraction merited 50 demerits, his record had been reduced to 30 demerits at the time of the event giving rise to this grievance. In the Arbitrator's view in all the circumstances, the assessment of 40 demerits and the dismissal of Mr. Moore was justified, and there is no basis disclosed for any mitigation of that penalty.

For the foregoing reasons the grievance must be dismissed.

April 12, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR