

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2021

Heard at Montreal, Tuesday, 8 May 1990

Concerning

CANADIAN PACIFIC LIMITED

And

UNITED TRANSPORTATION UNION

DISPUTE:

Dismissal cases of Engineer/Trainee J.A. Helyer and Trainman R.W. Portsmith of Revelstoke, who were dismissed for an incident at Notch Hill, B.C., May 26, 1987.

JOINT STATEMENT OF ISSUE:

On May 26, Engineer/Trainee Helyer, under the supervision of Locomotive Engineer Holdener, was operating Extra 5875 West on the Shuswap Subdivision when this train passed Signal 801N which indicated stop.

Trainman Portsmith was assigned as Head End Brakeman on this train when the Extra 5875 West passed Signal 801N which indicated stop.

An investigation was held and Engineer/Trainee Helyer and Trainman Portsmith were dismissed for this violation of UCOR Rule 292, sleeping on duty and several other associated rules violations.

The Union appealed the dismissals and subsequently requested their reinstatement.

With respect to Mr. Helyer, the Union contends that the evidence casts serious doubts as to the degree of responsibility of Engineer/Trainee Helyer for these violations because he was acting under the supervision of Engineer Holdener who shared with the Conductor the overall responsibility for the operation and safety of the train. The Union further contends that the material case of Engineer/Trainee Helyer conforms with that of Engineer Holdener who was subsequently treated far more leniently. Therefore, the Union contends the assessment of dismissal in Engineer/Trainee Helyer's case is too severe.

With respect to Mr. Portsmith, the Union contends that the evidence produced in the subsequent investigation casts serious doubts as to the degree of responsibility of Trainman Portsmith for the rules violations and, therefore, does not agree to the severity of discipline in relation to the evidence produced. The Union further contends that the material case of Trainman Portsmith conforms with that of Engineer Holdener who was subsequently treated far more leniently. Therefore, the Union contends the assessment of dismissal

in Trainman Portsmith's case is too severe.

The Company contends that the seriousness of these rules violations justified the dismissals of Engineer/Trainee Helyer and Trainman Portsmith and has refused to reinstate them in service.

FOR THE UNION:

(SGD) W. M. JESSOP  
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD) J. M. WHITE  
GENERAL MANAGER  
OPERATION & MAINTENANCE, HHS

There appeared on behalf of the Company:

D. A. Lypka - Unit Manager, Labour Relations, HHS, Vancouver  
B. P. Scott - Labour Relations Officer, Montreal  
F. O. Peters - Labour Relations Officer, Montreal

And on behalf of the Union:

W. M. Jessop - General Chairperson, Calgary  
B. Marcolini - National Vice-President, Ottawa  
J. M. Hone - Research Director, Ottawa  
L. H. Olson - National Vice-President, Edmonton  
J. Shannon - Vice-General Chairperson, Calgary

#### AWARD OF THE ARBITRATOR

The Union grieves the discharge of Engineer/Trainee Helyer and Trainman Portsmith for a number of rules infractions, including running their train through a stop signal contrary to UCOR Rule 292, when they and Locomotive Engineer D.A. Holdener were all asleep at the front end of their train, causing a near collision.

The material establishes that the grievors' freight movement, Extra 5875 West, was a 14,000 ton, 7,000 foot unit coal train powered by five locomotives. The train's crew, which also included Conductor S.G. Carefoot, was ordered for Revelstoke for 0125 hours, May 26, 1987, bound for Kamloops. Departing Revelstoke at 0207 hours, Extra 5875 West travelled westward to Clanwilliam where it took the siding to await the passage of two eastbound freight trains. It then travelled to Taft Siding, where it set off a diesel unit from the lead engine consist, departing at 0405 hours.

Mr. Helyer was at the controls of Extra 5875 West, under the direction and supervision of Locomotive Engineer Holdener. Trainman Portsmith, who was assigned as head end brakeman, travelled with Mr. Helyer and Mr. Holdener in the cab of the lead locomotive unit from Revelstoke to Taft Siding. As the movement left Taft Siding Mr. Portsmith left the lead unit, stationing himself in the cab of the second locomotive, with a radio. It is common ground that that was incorrect procedure, in violation of UCOR Rule 90A which requires that a trainman be stationed at the front of a train. It is further

agreed that Locomotive Engineer Holdener, as the responsible crew member in the lead unit, had an obligation to direct Mr. Portsmith not to leave its cab. It is established that Conductor Carefoot, who was located in the caboose at the rear end of the train, was not aware of this change of position by Trainman Portsmith.

With Engineer/Trainee Helyer and Locomotive Engineer Holdener in the cab of the lead unit, and Mr. Portsmith in the cab of the second locomotive in the power consist, Extra 5875 West travelled westward across the Shuswap Subdivision. At 0640 hours the grievors' train movement departed Tappen, which is the commencement of approximately eleven miles of two-track territory. The two-track territory ended at Notch Hill, following a descending grade of 0.7 miles. Extra 5875 West was scheduled to stop at Notch Hill to allow an eastward bound freight, Extra 5805 East, to clear Notch Hill before it could be released westward towards Kamloops on single track territory.

Extra 5875 West was followed by another westbound movement, Extra 5665 West. The record relates that Mr. Carefoot was in ongoing radio contact with the engineer of that train to keep him informed of the progress of Extra 5875 West so that he could better pace his train's movement.

After the departure from Tappen irregularities commenced in the operation of Extra 5875 West. The train passed a clear signal at Mileage 72.3, but none of the three head end crew members communicated the signal out loud to each other, as they are required to do by Rule 34 of the UCOR. The subsequent account of events by Mr. Portsmith reveals that he observed the signal, and shortly thereafter he fell asleep. A similar failure to communicate a signal occurred shortly thereafter at Mileage 74.5. Mr. Portsmith relates that at or about that time, he arose from his position in the locomotive engineer's seat of the second unit, walked to the opposite of the cab, then sat down again and fell back to sleep. It is common ground that when both signals were cleared Conductor Carefoot radio-communicated the passage of his caboose to the engineer of the train movement that was following.

Extra 5875 West next approached signal 767N at Mileage 76.7. Again the three crew members failed to communicate aloud the "clear" indication on that signal to each other. Locomotive Engineer Holdener relates that he fell asleep shortly after passing that signal, while Mr. Helyer states that he sounded a whistle signal for a public crossing at Mileage 77.8 and then also fell asleep. It is not disputed that Mr. Portsmith slept through the signal at Mileage 76.7. That signal, however, was seen by Conductor Carefoot, who again related the passage of his caboose to Locomotive Engineer Babuik, who was in control of Extra 5665 West which was following some distance behind.

At or about this time an extremely perilous situation emerged. With all three head end crew members asleep, their train movement passed Signal 785N at Mileage 78.5. It displayed an "approach" indication, which was to alert the crew that they were to be prepared to stop at the next signal. The stop of their movement was, of course, necessitated by their arrival at the end of the two-track territory, and the need to await the passage of freight train Extra 5805 East

approaching on single track territory.

The grievors' train was therefore subject to a stop signal displayed at Notch Hill. Mr. Holdener relates that he awakened at Mileage 79.5, some 0.7 miles from the stop signal. Extra 5875 West had just then passed a public crossing without any whistle or bell signal. The locomotive engineer then asked Mr. Helyer the indication of the last signal, to which Mr. Helyer, who admittedly was asleep and had not seen it, responded that the signal had been clear. This was plainly wrong as Signal 785N had displayed an "approach" indication requiring the train to prepare to stop. With that exchange Mr. Helyer and Mr. Holdener both fell back to sleep. It appears that Mr. Portsmouth remained asleep throughout this time.

The grievors' train then proceeded on a downhill grade, leading to the stop signal indicating the end of two-track territory. With the three head end crew members asleep the train proceeded through stop signal 801N and over the dual control switch at Notch Hill, out onto single track territory without any authority. It was then on a collision course with eastbound Extra 5805 East, which had sole authority to occupy that block of single track territory. As the grievors' train passed the dual control switch Locomotive Engineer Holdener awoke. He relates that he felt uncomfortable because he saw Engineer/ Trainee Helyer dozing at the controls. Conductor Carefoot then radioed the head end and asked if they were "highballing" Notch Hill, which is to say going through it without stopping, presumably as indicated by the signals. Mr. Helyer awoke, and responded to his conductor by radio, confirming that they were "highballing" Notch Hill. Grievor Helyer clearly had no basis to confirm that movement, as he had seen neither the approach signal nor the stop signal at Notch Hill. Nor had these been called to him by any other crew member, as both Mr. Helyer and Grievor Portsmouth had also been asleep at the critical signals.

Engineman Holdener then noticed that the train's speed was 30 m.p.h., which was in excess of the 25 m.p.h. speed limit for the location. In fact his movement was rapidly gaining speed, which caused him to instruct Mr. Helyer to take steps to slow his train by reducing the throttle and applying the brakes. The crew encountered difficulty slowing the movement of the train, which in fact accelerated to 38 m.p.h. before the brake application began to have an effect.

Meanwhile, Mr. G. Woo, the dispatcher responsible for that section of the Shuswap Subdivision, was alerted by an improper track occupancy indicator light on his control panel, which had been triggered by the unauthorized movement of Extra 5875 West through the stop signal. It then became apparent that Extra 5875 West was on a course of imminent collision with Extra 5805 East. Mr. Woo immediately radioed the head end of the westbound train, inquiring of their whereabouts. This, in turn, alerted the crew of eastbound Extra 5805 East of the danger at hand. Following a brief three-way radio exchange among the dispatcher and the engineers of both trains, both movements initiated stops, with Mr. Holdener and Conductor Carefoot simultaneously applying their train's emergency brake. At the same time the crew of the eastbound freight stopped their train on an uphill grade, fled the cab of their locomotive and tried to get as far away as they could in anticipation of an impending collision.

The material before me discloses that Extra 5875 West came to a stop 700 yards short of Extra 5805 East, which by then was stopped and had been abandoned by its crew. The yardage between the trains represents a travelling distance of little more than one minute. As the evidence reveals, but for the alert radio communication of Mr. Woo, which was overheard by the crew of Extra 5805 East, causing them to stop their movement, and the vigilance of Conductor Carefoot, a potentially catastrophic head-on collision between the two freight trains would certainly have occurred.

Following a subsequent investigation, Engineer/Trainee J.A. Helyer, Trainman R.W. Portsmouth and Locomotive Engineer D.A. Holdener were all dismissed for a number of rules violations, the most substantial of which was the violation of UCOR Rule 292 by proceeding through the stop signal at Notch Hill, while they were asleep at the controls of their train.

Subsequently, Locomotive Engineer Holdener was reinstated into employment, without compensation after some seventeen months out of service. Upon his return to work he was restricted to yard service. The reduction of the penalty for Locomotive Engineer Holdener was justified by the Company on the basis of his long service, which was some twenty-five years, as well as his good record. It does not appear disputed that he was without any discipline for an Operating Rule infraction over the entire period of his work with the Company, and that his discipline record was clear at the time of the incident at Notch Hill.

Messrs. Helyer and Portsmouth were not reinstated. They had three years and five years of service respectively, and both had some prior discipline. Mr. Helyer was once assessed ten demerit marks and received a warning letter for an infraction of Operating Rules. Mr. Portsmouth had thirty demerits outstanding on his record at the time of the incident, as well as a number of letters of reprimand, most of which related to behavioural problems and his failure to be available for duty. The Company's position is that neither Mr. Helyer nor Mr. Portsmouth had sufficiently long or positive records to justify mitigation of the penalty of discharge in their cases. The Union submits, however, that the reinstatement of Locomotive Engineer Holdener, who had supervisory responsibility over the actions of the grievors, represents an unfair and discriminatory treatment of the grievors in comparison.

The Union also submits that the penalty to be assessed against the grievors must take a number of factors into account. Among them it cites the evidence suggesting that the grievors did not deliberately intend or seek to sleep while on duty, but rather were overcome by fatigue which, the Union argues, was a natural result of the Company's scheduling and calling procedures to which they were subject. The Company does not dispute that Engineer/Trainee Helyer and Locomotive Engineer Holdener fell asleep involuntarily. It questions, however, the motives of Trainman Portsmouth who deliberately removed himself from the lead locomotive unit, and took up a position alone in the cab of the second locomotive, where he fell asleep.

I turn to consider the merits of these competing claims in light of the evidence. In so doing it is necessary to examine the evidence bearing on the Company's assertion that the grievors were the authors of their own misfortune because of their failure to get adequate rest prior to undertaking their assignment on the Revelstoke-Kamloops run.

The crew was home terminalled at Revelstoke. The material establishes that Locomotive Engineer Holdener was called at Revelstoke at 0020 hours for an on-duty time of 0125 hours on the morning of May 26, 1987. He had previously gone off duty at 1730 hours on Friday, May 22, 1987. Following an authorized leave of absence, he had booked on duty at 0835 Monday, May 25. It appears that Mr. Holdener awoke on Sunday, May 24th having had approximately 7 hours' sleep. He played golf that day and that night went to bed at 2230 hours. He awoke at 0800 hours on May 25th, and booked ready for duty at 0835. He again played golf that morning, returning home at 1230 hours. Later in the day he played slow pitch baseball from 1800 to 2100 hours. He then proceeded to the yard office and was informed that he could expect to go to work at approximately 0130 hours on the morning of May 26. He then returned home at 2145 hours. It appears that he went to bed at 2230 and was called at 0020 on the 26th, which gave him something less than an additional two hours' rest.

Mr. Helyer completed his previous tour of duty at 1350 on May 24, 1987. He went to bed at approximately 2330 that night, and slept until approximately 1100 the next morning. At or about noon he called the yard office to inquire as to his likely time of call and was told that he should expect to go to work at approximately 1630 that day, May 25th. Upon calling the yard office again later he was advised that he would likely be called at 2230 that night. Still later, at approximately 2130 he was told that he would be called at 0130, May 26. He then went to bed at around 2300, and was awakened by his call to work approximately one hour and twenty minutes later.

The record reveals that Mr. Portsmith had been on annual vacation from May 15, 1987. At 0842 on May 24, he booked ready for duty. He had gone to bed at approximately 0030 on the morning of May 25, to awaken at approximately 0630. Although he spent the balance of the day at home, he did not obtain any further rest or sleep. He states that he went to bed at about 2200 and was awakened by the phone at 2320, when he received his two-hour call to work on May 26. The record reveals, therefore, that Mr. Portsmith had approximately six hours' sleep on the night of May 24-25 and a further one and one-half hours' sleep prior to being called to duty in the early morning hours of May 26.

The record reveals without controversy that Conductor Carefoot obtained adequate rest in advance of his call to work on the 26th of May. He went off duty at Revelstoke at about 1230 on May 24, booking rest until 1230 on the 25th. He then slept from 1300 to 1600 on the 24th and later went to bed at 2200, awakening at 0645 on the 25th. Upon calling the yard office he was advised that he could expect to work around 1700 that afternoon. This information was updated during the course of the afternoon when he was told that he would not be required for work until 0030 on the 26th. He then went to bed at approximately 1900 and slept until 0025 on the 26th, when he received

his call for 0125, May 26th.

The record reveals that Conductor Carefoot took greater precaution that the other crew members in the amount of sleep which he obtained prior to his call to duty on the morning of the 26th of May, 1987. He had over eight hours' sleep on the night of May 24-25 and got a further five and one-half hours' sleep prior to his early morning call on May 26. As the record indicates, Conductor Carefoot had no apparent difficulty staying awake during the Revelstoke-Kamloops run. He remained in relatively regular radio contact with the crew of the westward train following his own movement, and communicated with his front end crew at Notch Hill. It appears from the material before me, however, that Mr. Carefoot failed to communicate with the head end to confirm the approach signal before Notch Hill, an action which might have triggered an earlier alert.

The circumstances of both of the grievors must be viewed individually. The Arbitrator has some difficulty with the assertion of the Company that Mr. Helyer was negligent or irresponsible in not obtaining adequate rest prior to his call on May 26. The record reveals that he had some twelve hours' sleep on the night of May 24-25. His time of awakening on the 25th is estimated at 1100 or 1130. While the Company asserts that he did not take the necessary precautions to obtain additional rest prior to his call, that claim must be assessed in the context of the facts. It is true that in mid-afternoon Mr. Helyer was told that he would likely be starting a tour of duty approximately twelve hours after he had arisen. However, the Arbitrator finds it difficult to ascribe the same degree of blameworthiness as the Company to Mr. Helyer's apparent failure to obtain further sleep during the afternoon and early evening of the 25th. It is not disputed that he slept for one hour and twenty minutes at 2300. Earlier Mr. Helyer had had some twelve hours' sleep, and arose at 1130 on May 25th. In that circumstance I find it questionable to expect him to have returned to bed in the afternoon of that day to obtain further sleep in anticipation of a call at or about midnight. Absent specific medical evidence to the contrary, I cannot find that the Company has proven, on the balance of probabilities, that Mr. Helyer was physically capable of gaining any further significant sleep before the lapse of ten or eleven hours after the time he awoke from a sleep of twelve hours. For these reasons the Arbitrator is not persuaded by the argument of the Company that Mr. Helyer's discharge can be substantially justified on a blameworthy failure to obtain additional hours of sleep during the afternoon and early evening of May 25th.

There are, however, other circumstances which bear significantly against the Union's claim on behalf of Mr. Helyer. As Extra 5875 West approached and passed through Notch Hill, Mr. Helyer was at the controls. Although he is an engineer/trainee, he had a substantial number of hours of operating time as an engineer to his credit, and was a fully qualified conductor. He was, in other words, well aware of the Operating Rules governing his train. He also had a good knowledge of the Shuswap Subdivision. When he began to drift in and out of sleep he knew, or reasonably should have known, that he and his crew-mates were in a position of danger. Even if one accepts, without necessarily finding, that his fatigue was such that he could not realize his limitations, the actions of Mr. Helyer in the

critical moments before the near collision give serious pause respecting the degree of his responsibility in this matter. When Locomotive Engineer Holdener awakened at Mileage 79.5 and asked Mr. Helyer the indication of the last signal, Mr. Helyer did not tell his engineer that he had been asleep and had missed the signal or that it had not been called by the brakeman. Rather, he told him that Signal 785N, a critical "approach" indication, had been clear. Given the gravity of what was at stake, the Arbitrator can place little credence or weight on the claim of Mr. Helyer that he believed that Mr. Holdener was aware of the signal and was only testing him for his alertness.

Secondly, in the most perilous minute of all, when Conductor Carefoot inquired of the head end whether they were "highballing" through Notch Hill, Mr. Helyer immediately took the radio in hand and, without any real appreciation of where his train was or the nature of the governing signals, simply confirmed that they were passing through Notch Hill without slowing or stopping. The recklessness of that action is cause for serious concern. In an apparent effort to cover his own failure to remain vigilant and aware of his train's situation, Mr. Helyer deliberately mislead Engineer Holdener and Conductor Carefoot as to the status of the signals at Notch Hill and the train's movement through that section of track. It was only the radio inquiry of Dispatcher Woo which alerted both Mr. Holdener and other crews in the area to the irregularity of the situation. Within forty seconds of Mr. Woo's inquiry, Engineman Holdener applied the emergency brakes of his train, just as Conductor Carefoot did. There appears to be little doubt that if the misinformation generated by Mr. Helyer had not been countered in that way a most unfortunate head-on collision would have resulted.

The record indicates that Trainman Portsmouth deliberately removed himself from his normal place of duty in the lead engine to take up a position alone in the cab of the second locomotive. His action in that regard was taken without the authorization of his conductor and was plainly in violation of UCOR Rule 90A. Alone in that location, Mr. Portsmouth went to sleep and removed himself from any effective participation in protecting his assignment. I am compelled to accept the Company's characterization of his actions. Mr. Portsmouth knowingly abandoned his work station and proceeded to an unauthorized location where he fell asleep for a considerable period of time. In his case the suggestion of the Company that he demonstrated negligence in failing to obtain sufficient rest in the hours prior to going on duty is also compelling. Mr. Portsmouth had only six hours' sleep on the night May 24-25. He had every opportunity to obtain additional sleep during the course of the 25th, particularly when he knew during the afternoon that he would be called at or about midnight. He nevertheless did not go to bed until 2200, limiting his additional sleep to something less than an hour and a half. The Arbitrator is not persuaded in these circumstances that Mr. Portsmouth exercised the degree of caution to be expected of an employee who is under an obligation to make every reasonable effort to obtain the rest or sleep adequate to an anticipated call to duty at a late hour.

Violations of UCOR Rule 292 have traditionally been considered among the most serious of rules infractions. Prior awards of this Office have upheld the discharge of the members of train crews who have for



any number of reasons, including inattention, ignored a stop signal. For example, in CROA 474 the Arbitrator sustained the discharge of a trainman and a conductor whose inattention allowed their movement to pass through a stop signal and into a circumstance of near collision, not unlike the case at hand. In a different context, in CROA 1685 this Office sustained the dismissal of a machine operator who fell asleep while operating a self-propelled track maintenance machine, causing a collision. Also, in CROA 1841 the dismissal of a locomotive engineer who abandoned his post as second engineer in a passenger train, moving into a passenger coach where he fell asleep was also upheld. In my view while the facts are not identical, there are similarities between that conduct and the actions of Mr. Portsmouth.

Can it be said that Mr. Helyer and Mr. Portsmouth were unfairly dealt with, having regard to the reinstatement of Locomotive Engineer Holdener to a yard position after a seventeen month suspension? I think not. Mr. Holdener did bear a greater degree of responsibility for the conduct of operations in the cab of the head end locomotive than did either of the grievors. That being said, however, in the particular circumstances of this case I find it difficult to conclude that either Mr. Helyer or Mr. Portsmouth can shelter their rules violations behind the shield of the Locomotive Engineer's authority. As indicated above, Mr. Helyer deliberately mislead both Engineman Holdener and Conductor Carefoot with respect to the status of signals and the authorized movement of their train. I am compelled to the reluctant conclusion that he did so to protect his own errors from being detected, and in reckless disregard of the safety of his fellow crew members.

Mr. Portsmouth, on the other hand, is an employee of five years service who is fully qualified as a train conductor. I find it difficult to appreciate how he can rely on Engineman Holdener's apparent condonation of having left the cab of the front end locomotive as mitigating his own conduct in any significant way. Lastly, while Engineman Holdener's errors of judgement, including his apparent failure to obtain adequate rest prior to coming on duty, are cause for concern, he is, like any employee, entitled to the mitigating benefit of long years of service with an unblemished record respecting the observance of Operating Rules. The fact that Mr. Holdener had twenty-five years of service with no prior discipline for rules offenses is, in my view, a legitimate mitigating factor applying to his case. There is no comparable mitigating record of service that can be brought to bear in the case of either Mr. Helyer or Mr. Portsmouth. Nor can the Arbitrator sustain the Union's argument that a systemic bias operates against trainmen because they tend to be of shorter service than locomotive engineers, and are therefore less able to benefit from the mitigating value of long service. Service is service, and the prior service of a locomotive engineer as a trainman plainly is counted for the purposes of mitigation. Moreover, the long service of a trainman or conductor, like Mr. Carefoot who had twenty-three years' service, is routinely taken into account in matters of discipline in cases of this kind (see CROA 1677). I can find nothing discriminatory in the reality that certain classifications of employees are, on average, junior in service to the incumbents in a higher paid classification.

As a general matter the Arbitrator accepts several of the points of principle raised by the Union in this case. There is, I think, a distinction to be made between an employee who deliberately goes to sleep when he or she is responsible for some aspect of a train movement and one who succumbs inadvertently to fatigue. Additionally, it is legitimate to consider, on a case by case basis, whether an employee could fairly be expected to obtain meaningful rest in the hours prior to a call; close attention should be paid to the pattern of sleep of the employee over a substantial period of time leading up to his or her tour of duty. If the Company can point to an employee's failure to obtain rest, as I think it properly can, the converse must also be true for the Union.

In the instant case, however, those factors do not serve to mitigate substantially with respect to either Mr. Portsmouth or Mr. Helyer. While the conduct of Mr. Portsmouth is not as graphic as that disclosed in the case of the locomotive engineer who left his post to fall asleep in a passenger coach (CROA 1841), there are disquieting similarities. At a minimum, it can be said that Mr. Portsmouth knowingly placed himself in an unauthorized location where the opportunity for direct contact with other employees, and conversation that might assist in combatting sleep, was nonexistent. He placed himself in an unauthorized location where the chances of succumbing to inadvertent sleep were substantially higher. In the case of Mr. Helyer, while the Arbitrator does not fully accept the Company's view that he reasonably should have made greater efforts to get additional rest prior to coming on duty, the mitigating value of that conclusion is ultimately countered by the un rebutted evidence of his deliberate acts of falsehood and recklessness which he knew, or reasonably should have known, could have had fatal results.

For all of the foregoing reasons the Arbitrator can find no responsible basis on which to allow either of the grievances. Both grievors are relatively junior employees whose deliberate acts of negligence and recklessness gravely imperilled their own lives, the lives of their fellow crew members, the crew of the oncoming movement as well as the equipment of the Company and the freight of its customers. Their service and records are not comparable to those of the long service engineman who was reinstated on compassionate grounds, and I can see no justification for a reduction of the penalty of discharge in the circumstances.

For the foregoing reasons the grievances must be dismissed.

May 11, 1990

(Sgd.) MICHEL G. PICHER  
ARBITRATOR