

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2032

Heard at Montreal, Wednesday, 13 June 1990

Concerning

CANADIAN PACIFIC LIMITED

And

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of twenty (20) demerits assessed the record of Trainman/Yardman B.E. MacDonald of Toronto, Ontario, for his failure to report to proper Company authorities a fellow employee working in an abnormal manner, a violation of UCOR General Rule E.

JOINT STATEMENT OF ISSUE:

Trainman B.E. MacDonald was working as the Brakeman on CP Extra 5545 West, Port Hope, Mileage 143.2 Belleville Subdivision, May 19, 1989, with crew members S. Grundle, Conductor, and J.D. Connor, Locomotive Engineer.

The Company received a telephone call from a customer indicating that a member of the train crew of Extra 5545 West was suspected of being under the influence of alcohol. Conductor Grundle was subsequently withheld from service and an investigation into the matter was conducted.

The Union contends that the Company based the assessment of discipline on the fact that Mr. MacDonald should have known that the Conductor had been drinking. It is also the Union's position that the investigation did not establish that Trainman MacDonald was aware that his Conductor had been drinking.

The Union requests that the discipline be removed and that Trainman MacDonald be paid for all lost time.

The Company disagrees with the Union's position and furthermore declines the Union's appeal.

FOR THE UNION:
(SGD) J. R. AUSTIN
GENERAL CHAIRPERSON

FOR THE COMPANY:
(SGD) E. S. CAVANAUGH
GENERAL MANAGER OPERATION & MAINTENANCE,
IFS

There appeared on behalf of the Company:

H. B. Butterworth -- Assistant Supervisor, Labour Relations, Toronto
B. P. Scott -- Labour Relations Officer, Montreal

J. J. Worrall -- Assistant Supervisor, Labour Relations, Toronto
R. Egan -- Assistant Supervisor, Labour Relations, Toronto
F. O. Peters -- Labour Relations Officer, Montreal

And on behalf of the Union:

J. R. Austin -- General Chairperson, Toronto
B. Marcolini -- National Vice-President, Ottawa
J. M. Hone -- Research Director, Ottawa

AWARD OF THE ARBITRATOR

The Company assessed twenty demerits against Trainman MacDonald because, in its opinion, he knowingly failed to report the inebriated condition of Conductor S. Grundle while they were working together on CP Extra 5545 West on May 19, 1989. In the Arbitrator's view, however, the evidence falls short of establishing conclusive knowledge on the part of Mr. MacDonald. It is not disputed that for the greater part of the tour of duty Mr. MacDonald, who worked on the head end of the train, was not in close proximity to Mr. Grundle. It does appear, however, that the two men worked in close physical proximity for a time variously estimated at between six and ten minutes, approximately one hour before Mr. Grundle was found to be intoxicated by Company supervisors acting on the complaint of a customer whose employee had observed Mr. Grundle during switching operations earlier in the day.

While the evidence falls short of establishing that Mr. MacDonald knew conclusively that his workmate was under the influence of alcohol, the Arbitrator cannot conclude that he made every reasonable effort to ensure that Mr. Grundle was in a physical state compatible with the safe discharge of his duties. In other words, while I cannot find that he knowingly knew of and deliberately concealed Mr. Grundle's intoxication, I cannot avoid the conclusion that Mr. MacDonald was careless in not identifying the problem and taking steps to mitigate against it. While I consider this a lesser offense than the deliberate course of cover-up alleged against Mr. MacDonald, it is, nevertheless, deserving of some lesser degree of discipline.

The Arbitrator therefore directs that ten demerits be substituted for the twenty demerits registered against the grievor's record, with the notation to be amended to reflect a failure to exercise the proper vigilance with respect to the sobriety of a fellow employee during his tour of duty.

June 15, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR