

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2053

Heard at Montreal, Wednesday, 12 September 1990

Concerning

VIA RAIL CANADA INC.

And

UNITED TRANSPORTATION UNION

DISPUTE:

The assessment of 45 demerit marks to Mr. A.F. MacNeil for failure to comply with Special Instructions 2.1, 2.4 and 2.11 on September 7, 1989, resulting in Train 661 occupying the main track at Kitchener without authority.

JOINT STATEMENT OF ISSUE:

Mr. A.F. MacNeil was the Conductor on Train 661 on September 7, 1989. When the train was in the vicinity of Breslau, Ontario M.B.S. clearance no. 225 was radioed to and copied by Mr. MacNeil.

That clearance authorized Train 661 to proceed from mile 52, Guelph Subdivision to Kitchener, take siding at Kitchener, restrictions nil. The train did not take the siding as instructed.

As a consequence of the foregoing, Mr. MacNeil attended a disciplinary investigation on September 13, 1989, after which he was assessed 45 demerit marks.

It is the Union's position that as there were mitigating circumstances, the discipline was too severe, if not unwarranted. The Union therefore has requested that the demerit marks be reduced, if not removed, from his record.

The Corporation has declined the request.

FOR THE UNION:

FOR THE CORPORATION:

(SGD) G. BINSFELD  
for: GENERAL CHAIRPERSON

(SGD) C. C. MUGGERIDGE  
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

K. Taylor                      Senior Officer, Labour Relations, Montreal  
Wm. R. Radcliffe              Manager, Transportation, Toronto

And on behalf of the Union:

G. Binsfeld	Secretary/Treasurer, GCA, St. Catharines
T. G. Hodges	General Chairperson, St. Catharines
G. Bird	Vice-General Chairperson, Montreal

#### AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes beyond controversy that Conductor MacNeil did fail to take the designated siding at Kitchener, thereby exceeding the authorized clearance for Train 661. In fact the passenger railliner under his control bypassed the entrance to the siding at Kitchener, located on the north side of the main line at Mileage 60.30 and proceeded to a second siding on the south side at Mileage 62.09, where it left the main track, having travelled a distance of 1.78 miles without authorization.

The record reveals that the grievor's train operated initially under MBS Clearance 219 which gave it authority to Mileage 62.1 of the Guelph Subdivision. Thereafter it received a further MBS clearance, No. 225, cancelling the prior authority and instructing the train to "Take siding at Kitchener". It does not appear disputed that at one time, approximately a year prior to this incident, the siding at Kitchener consisted of the spur on the south side of the main line at Mileage 62.09. The transcript of evidence before the Arbitrator discloses that both the grievor and his engineman believed that the instructions in MBS Clearance 225 directed their train to proceed to Mileage 62.09, which formerly was the site of the Kitchener siding. Because of revisions to footnote 2.5 appearing on page 71 of the Great Lakes Region Time Table No. 41, of which the grievor was required to be aware, the designation "Kitchener Siding" had been changed to the siding located north of the main track at Mileage 60.30. In the result, a serious error was made.

It is not disputed that the failure of a conductor or engineman to observe the limits of an MBS authorization in respect of a train movement is a serious breach of duty. Each case, however, must be carefully assessed on its own particular facts. In this case there are, in the Arbitrator's view, mitigating factors which do bear on the severity of the discipline to be assessed. The evidence reveals that there had been a change in the designation of the Kitchener siding, in effect for approximately a year prior to the incident in question. While both Mr. MacNeil and his engineman were in a general sense aware of that change, both employees indicated that they inadvertently assumed that the reference to the "Kitchener siding" indicated authority to proceed to Mileage 62.09, being the old south side siding. It is arguable that the rules infraction would have been avoided had MBS Clearance No. 225 been more specific, as for example instructing the grievor to "Take the siding at Kitchener at Mileage 60.30". While it is true that the grievor was taken to have understood the revised definition of the Kitchener siding appearing in the footnotes to the timetable, it may be that greater clarity in the Company's own dispatching practice might have reduced the chance of misunderstanding.

The instant case does not disclose a reckless disregard for train

movement rules on the part of the grievor, but rather an error in judgement, albeit serious, on the occasion of what was admittedly Mr. MacNeil's first occasion to use the new siding at Kitchener. While these factors do not excuse the conductor's error, they do, in the Arbitrator's view, to some degree mitigate the gravity of the error committed.

A further factor to be considered is the grievor's prior service. Mr. MacNeil has been employed by the Corporation and its predecessor for some twenty-five years. During the entire period of his service he has not been involved in a serious rules infraction. Moreover, his disciplinary record was fully clear at the time of the incident. Taking all of these factors into consideration, including the objective circumstances of the incident and the nature of the grievor's error of judgement, the Arbitrator is satisfied that this is an appropriate case for a reduction of the disciplinary penalty imposed.

For the foregoing reasons the grievor's record shall be amended to reflect the assessment of thirty demerits for the grievor's failure to comply with the directions given to him in respect of Train 661 by MBS Clearance No. 225 on September 7, 1989.

September 14, 1990

MICHEL G. PICHER  
ARBITRATOR