

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2158

Heard at Montreal, Wednesday, 12 June 1991

concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

The Company's refusal to accept Trainman B.C. Grieve into the Locomotive Engineer Training Program.

JOINT STATEMENT OF ISSUE:

On September 7, 1989, Mr. Grieve was removed from a Locomotive Engineer Training Program as the result of a disciplinary action resulting from a rule violation.

Subsequently, the Company advised by bulletin that a training program for Locomotive Engineers would be conducted, and that interested employees could submit their applications and be considered for acceptance in accordance with Appendix A-5 and Appendix B-9 of the Collective Agreement.

Mr. Grieve was denied acceptance into the training program on the grounds that the Company was not satisfied that he possessed the necessary maturity to accept the responsibilities associated with being a Locomotive Engineer.

The Union contends that Mr. Grieve was accepted into a prior training program and can therefore not agree that he be precluded from being accepted into a subsequent training program. The Union has requested that Mr. Grieve be accepted into the upcoming training program.

The Company contends that Mr. Grieve has not displayed the necessary requirements in order to be considered for acceptance into a Locomotive Engineer Training Program and has therefore declined the Union's request.

FOR THE UNION:

(SGD.) J. R. AUSTIN  
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) E. S. CAVANAUGH  
GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

J. J. Worrall

-- Assistant Supervisor Labour  
Relations, IFS, Toronto

G. Chehowy

-- Labour Relations Officer, Montreal

G. McBurney	-- Supervisor, Labour Relations, IFS, Toronto
K. E. Jenne	-- Road Foreman of Engines, Sudbury
R. Hunt	-- Observer, Labour Relations Officer, Montreal
L. Wormsbecker	-- Observer, Labour Relations Officer, Montreal
R. LaRue	-- Observer, Solicitor, Montreal

And on behalf of the Union:

D. Warren	-- Vice-General Chairperson, Toronto
J. R. Austin	-- General Chairperson, Toronto
B. Marcolini	-- National President, UTU--Canada, Ottawa
L. Davis	-- Local Chairperson, MacTier
B. C. Grieve	-- Grievor

#### AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that the Company acted both in good faith and reasonably when it declined to accept Trainman Grieve into the locomotive engineers' training program which commenced on February 26, 1990. The material before the Arbitrator establishes that, some six months prior, Mr. Grieve had been removed from a locomotive engineer training program for having knowingly violated a speed restriction while in control of a locomotive over an extensive section of road. The infraction was not denied and the locomotive engineer who was then supervising the grievor, and who, it appears, directed him to operate at excessive speed, was assessed thirty demerits. The representations of the Company further disclose that on one other occasion during the course of the same training course Mr. Grieve was found to be speeding and was cautioned in that regard by a course instructor.

The Company takes the view that the grievor's conduct, and particularly the speeding infraction which lead to his dismissal from the training course in September of 1989, disclosed a questionable level of maturity and responsibility which, in its view, justified a decision not to admit him to the locomotive engineer's training course established some five months after the incident that lead to his removal from the earlier training course. In the Arbitrator's view, in all of the circumstances, that was not an unreasonable exercise of management's judgement. While I am prepared to accept that the collective agreement contemplates that a trainman is not to be denied access to engineer training other than for bona fide business purposes, I cannot find that that standard has been violated in the case at hand. In the Arbitrator's view it is not unreasonable for the Company to require a reasonable period of subsequent good service as evidence that an employee has appreciated the gravity of a previous serious error, and has demonstrated a high level of service over a sufficiently sustained period of time so as to give the employer a substantial basis on which to conclude that the employee has come to possess the requisite level of maturity and responsibility to justify his or her admission into a training course that can lead to promotion into the

ranks of locomotive engineers. On the basis of the facts at hand, I am satisfied that the Company exercised its judgement reasonably and that the grievance cannot succeed.

Before leaving this matter, however, some further observations should be made. The record tabled before the Arbitrator establishes, beyond controversy, that the quality of service displayed by Mr. Grieve over the last year of his service has been of the highest caliber. On one occasion his vigilance while on duty in a caboose resulted in the detection of a fire in a wheel journal. Mr. Grieve immediately stopped the train and extinguished the fire -- a course of action which may well have prevented a derailment. That incident, which occurred on August 26, 1990 was followed by still another example of highly responsible service. On April 5, 1991 the grievor alertly detected a missing oil plug on an engine journal box, which resulted in the journal box being found to be dry and the defective unit being set off. Again, a possible derailment was avoided. For that incident Mr. Grieve was rewarded with the recording of ten merit marks on his record effective June 3, 1991.

At the hearing the Company acknowledged the good quality of Mr. Grieve's service over the past year and implicitly acknowledged that continuation of that standard of performance would lead to Mr. Grieve being given the fullest consideration for acceptance into the next available locomotive engineers' training course. Indeed, it would appear to the Arbitrator that a continuation of Mr. Grieve's exemplary record of service would place a substantial onus on Company officers to justify his exclusion from a subsequent locomotive engineers' training course. The grievor shows every sign of being a dedicated employee who has learned from his past mistakes who will be a faithful and responsible employee in the service of the Company in the years to come.

For the foregoing reasons the grievance must be dismissed.

June 14, 1991

(Sgd.) MICHEL G. PICHER  
ARBITRATOR