

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2161

Heard at Montreal, Tuesday, 9 July 1991

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of the discipline assessed the record of Brakeman R. Mongeon, 20 June 1990.

JOINT STATEMENT OF ISSUE:

On 20 June 1990, R. Mongeon was working as head-end brakeman of Train 308 operating between Montreal to Joffre on the Drummondville Subdivision. On that date, track maintenance work was being performed between Mileage 16 and Mileage 15 on the Drummondville Subdivision.

The crew of Train 308 had in its possession DOB 171, dated 20 June 1990, which contained the following instructions:

7. On June 20 between the following hours zero-seven-thirty 07:30 and seventeen hundred 17:00 Eastbound trains will approach the red signal at Mileage sixteen 16 and Westbound trains will approach the red signal at Mileage fifteen 15 Drummondville Subdivision prepared to stop and will not pass this signal without receiving instructions from Foreman Reno Routier either by radio communication or personal contact. The yellow signal governs Westbound trains and is situated at the East switch of the Trudel Siding.

(translation)

Despite these instructions, a portion of the grievor's train passed the red signal at Mileage 16 without having obtained the prior authorization of Foreman Routier.

Following an investigation the grievor was assessed a 90-day suspension for failing to observe the requirements of Item 7 of DOB 171, dated 20 June 1990, while in service as head-end brakeman on Train No. 308.

The Union contends that the discipline assessed was too severe. The Company rejected the Union's appeal.

FOR THE UNION:

FOR THE COMPANY:

(SGD.) R. LEBEL

(SGD.) M. DELGRECO

GENERAL CHAIRPERSON

for: ASSISTANT VICE-PRESIDENT, LABOUR
RELATIONS

There appeared on behalf of the Company:

M. S. Hughes	-- System Labour Relations Officer, Montreal
J. Pasteris	-- Manager, Labour Relations, St. Lawrence Region, Montreal
G. Dumas	-- Labour Relations Officer, St. Lawrence Region, Montreal
J. M. Gagnon	-- Trainmaster, Montreal
M. S. Fisher	-- Special Projects Coordinator, Transportation, Montreal
Z. Kinach	-- Special Projects Officer, Transportation, Montreal

And on behalf of the Union:

R. Lebel	-- General Chairperson, Quebec
F. Garant	-- Local Chairperson, Montreal
J. Collet	-- Local Secretary, Quebec
P. Davis	-- Representative, Quebec
G. Hall,	-- General Chairman, BLE, Quebec
G. Gauthier	-- Observer
R. Mongeon	-- Grievor

AWARD OF THE ARBITRATOR

The evidence reveals that on January 26, 1990 the Company issued circular M--3964 in order to communicate to employees the gravity of MBS violations. This circular reads, in part, as follows:

The incidence of violations of MBS authorities is cause for grave concern. A review of infractions in this regard reveals that many of such occurrences result from a ``failure'' to secure permission prior to entering the work limits of a Foreman.

Such is occurring despite the fact that the restriction is issued in clear, concise terms on MBS clearances. It is incumbent on all concerned both in the issuance and execution of such authorities to exercise care and ensure compliance.

...

Due to the gravity of the situation, all violations will be thoroughly investigated and where warranted, discipline will be assessed to a level reflective of the aforementioned concern and requirement. Such is in keeping with our responsibility and expressed commitment to operate in a work environment conducive to safety.

The Company's evidence shows that after issuing this circular, it adopted a general policy. According to that policy all employees responsible for an infraction of Rules 42 and 292 of the Uniform Code of Operating Rules, as well as all other rules of comparable importance, would be assessed an automatic 90-day suspension for the first infraction.

The Arbitrator recognizes that the employer can establish reasonable work rules, including disciplinary rules. However, it is necessary that those rules be clearly communicated to the employees, and that they be applied in a consistent and equitable fashion. (see K.V.P. Co. Ltd. (1965) 16 L.A.C. 73 (Robinson)).

In the instant case, there was no notice given to the employees to the effect that an automatic assessment of a 90-day suspension would ensue from a first violation of those operating rules. Furthermore, the evidence reveals that formerly the practice of the Company had been less severe. The discipline normally assessed for the violation of those rules had generally been thirty demerit points, depending on the evaluation of such mitigating factors as the employee's length of service and prior discipline record. The Arbitrator agrees that the Company is entitled to impose a severe level of discipline, including suspension, for the violation of rules which are so important to the safety of its operations. In general, when such a rule is promulgated and clearly communicated to the employees, it is incumbent upon an arbitrator to accord it substantial weight in considering the appropriate disciplinary sanction. On the other hand, an arbitrator is not strictly bound by a rule which attaches no importance to mitigating factors, such as the particular circumstances of the incident, as well as the prior service and discipline record of the employee in question. It follows that the arbitrator has the discretion to reduce the discipline if he deems that the sanction is not justified, given these mitigating factors.

Prior awards of this Office have upheld long suspensions for infractions of the cardinal rules governing the movement of trains, and as well has overturned suspensions in favour of the imposition of demerit points, in light of the particular circumstances. (See CROA 283, 725, 1305, 1854 and 1943.)

The award in CROA 2124 assessed a suspension of some months to Conductor R. Trempe as a result of the same incident which forms the basis of the grievance of Brakeman Mongeon. The disciplinary record of Mr. Trempe left much to be desired. However, Mr. Mongeon has a discipline record which has remained clear over his twenty-four years of service to the employer. On the other hand, by virtue of circular M--3964 of January 1990, Mr. Mongeon was aware that the Company would impose severe disciplinary sanctions for MBS violations.

In the circumstances, given the prior notice (to the employee) and the gravity of the offence, the Arbitrator deems that a suspension was justified. However, given the good service of the grievor and his clear discipline record over twenty-four years, a suspension of three months is excessive. In my view, a suspension of thirty days would suffice to make Mr. Mongeon understand the importance of paying the greatest attention to MBS instructions in the future.

For these reasons the grievance is allowed, in part. The grievor's record shall be amended to reflect a 30-day suspension. Furthermore, Mr. Mongeon will be compensated for his loss of wages and benefits corresponding to the difference between the 90-day suspension and the reduced suspension ordered by the Arbitrator, without loss of seniority.

July 13, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR