CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2177

Heard at Montreal, Tuesday, 10 September 1991

concerning

VIA RAIL CANADA INC.

and

UNITED TRANSPORTATION UNION

DISPUTE:

The assessment of 30 demerit marks to Mr. J.A. Green for violation of U.C.O.R. Rule 292, while working on Train 63 on December 21, 1988.

JOINT STATEMENT OF ISSUE:

On December 21, 1988, Mr. Green was assigned to Train 63 during its movement from the Montreal Maintenance Centre to Central Station. During this movement, the train passed a stop indication at signal 128L and entered an unauthorized track.

Mr. Green attended a disciplinary investigation into this matter and was subsequently assessed 30 demerit marks.

It is the Union's position that Mr. Green complied with U.C.O.R. Rule 292 and the discipline is not warranted.

It is the Corporation's position that Mr. Green did not comply with the requirements of U.C.O.R. Rule 292 and that the discipline is justified.

FOR THE UNION:	FOR THE CORPORATION:
(SGD.) T. G. HODGES	(SGD.) C. C. MUGGERIDGE
GENERAL CHAIRPERSON	DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

K. Taylor	- Senior Labour Relations Officers, Montreal
A. Richard	- Observer

And on behalf of the Union:

T. G. Hodges	- General Chairperson, Fort Erie
M. Gregotski	- Vice-General Chairperson, Fort Erie
P. Ethier	- Local Chairperson, Montreal

AWARD OF THE ARBITRATOR

There is no dispute that the train to which Trainman Green was assigned on December 21, 1988 proceeded through a stop indication at Signal 128L, in contravention of Rule 292. The evidence discloses, however, that the train was fully stopped at the signal before proceeding. At that time the grievor was seated on the opposite side of the engine cab from the signal. Because the signal was close to ground level, it was not visible to Trainman Green. It was within sight of the train's engineman, as well as a maintenance employee who was riding in the cab. Both of them mistakenly read the signal as "slow approach", causing them to call that signal to the grievor, who then repeated it in compliance with normal procedure. With that the train proceeded past the signal, at slow speed, in contravention of Rule 292.

In the circumstances, it appears to the Arbitrator that Trainman Green complied with normal procedures, including the requirements of U.C.O.R. Rule 34. While that rule indicates that members of train crews must know the indication of train order signals, it appears clear from the wording of the rule that it contemplates that certain signals may be visible to some crew members and not to others. For that reason the rule requires, in part, that "... all members of engine and train crews must, when practicable, communicate to each other by its name the indication of each signal affecting the movement of their train or engine".

In the instant case, by no fault or error of his own, Mr. Green was given an incorrect reading of the stop signal at Signal 128L. He correctly repeated the signal which had been conveyed to him, and which was not visible from his position, after which the train proceeded. In the circumstances, the Arbitrator accepts the argument of the Union that it was not practicable, nor was it within the contemplation of the Uniform Code of Operating Rules, that the grievor be obliged to leave his post and proceed to the other side of the locomotive to verify the signal being relayed to him by the engineman. Rather, I am satisfied that this is one of a number of circumstances where a crew member complies with the rule by verbally confirming the oral communication of a signal from another crew member who has a direct view of it. While that circumstance may typically arise in movements such as the backing of trains in or around yards where vision from the cab is obscured and where the communication is from ground to cab, its application need not be so restricted. Moreover, it appears, as the Union submits, that the safe operation of the locomotive in the instant case was better protected by Mr. Green remaining vigilant on his side of the locomotive, with a minimum of unnecessary movement within the cab. For the foregoing reasons the Arbitrator is satisfied that the Corporation has not disclosed that the grievor was responsible for the violation of U.C.O.R. Rule 292 for which he was disciplined. The grievance is therefore allowed. The grievor's record shall be restored to reflect the removal of the thirty demerit marks assessed against him.

September 13, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR