CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2338
Heard at Montreal, Wednesday, 10 March 1993
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
EX PARTE
DISPUTE:
Assessment of discipline to Mr. G. Dillon for proceeding beyond stated limits in locomotive crane in violation of Operating Rule 266.
BROTHERHOOD'S STATEMENT OF ISSUE:
On August 1, 1990 Mr. Dillon was employed as the Work Equipment Operator on a locomotive crane with a pilot conductor. Rule 266 Authority #585 governed the times and limits of the locomotive crane's movements. At 1200 locomotive crane moved onto main track Halton Subdivision beyond its Rule 266 stated limits. Mr. Dillon was assessed 30 demerits points.
The Union contends that: 1) The Company has not established Mr. Dillon's responsibility in this matter. 2) One of the reasons Mr. Dillon was assigned a conductor pilot is because it is the conductor pilot, not the Work Equipment Operator, who knows the territory. 3) Mr. Dillon twice stopped the movement of locomotive crane 50483 to ascertain from the pilot conductor that they had authority to proceed. 4) Mr. Dillon did everything is his power to ensure compliance with the Rule 266 limits. Therefore, the discipline assessed was too severe and unwarranted.
The Union requests that: The 30 demerit points be removed from Mr. Dillon's record.
The Company denies the Union's contentions and declines the Union's request.
FOR THE BROTHERHOOD:
(SGD.) R. A. BOWDEN
SYSTEM FEDERATION GENERAL CHAIRMAN
There appeared on behalf of the Company:
R. Lecavalier
Counsel, Montreal
K. R. Peel
Assistant Regional Counsel, Toronto
C. St-Cyr
Manager, Labour Relations, Montreal
And on behalf of the Brotherhood:
D. B. Brown
Senior Counsel, Ottawa
P. Davidson
Counsel, Ottawa
R. A. Bowden
System Federation General Chairman, Ottawa
R. Phillips
General Chairman, Ontario

AWARD OF THE ARBITRATOR

On a careful review of the material the Arbitrator is satisfied that the breach of the Rule 266 limits was not Mr. Dillon's fault. It is clear from his own statement, which is unchallenged, that he proceeded past the limits on the specific instruction of his conductor. It is not disputed that he was uncertain as to the point at which the movement was required to stop, and that he inquired twice of his conductor in that regard. While it is true that he continued to proceed once he was aware that the limits had been passed, he did so in the belief that because the conductor had specifically ordered him past the limits, that he must have had proper authority to do so. It is not disputed that when his unit was operating the noise was such that the Mr. Dillon could not overhear all radio communications between the conductor and the dispatcher.

In the unique circumstances of this case, the Arbitrator is satisfied that what transpired was not an act of carelessness or willful disregard of the rules by Mr. Dillon. At most, his actions involved an error of judgement induced by the careless violation of the rule by Conductor Anthony, who was in charge of the movement.

Even if one accepts that some degree of discipline was appropriate in such a circumstance, there are mitigating factors, apart from the role of the conductor, which must be considered. Mr. Dillon is an employee of twenty years' good service who, remarkably, has never in all of that time been the subject of any discipline whatsoever. If, as is appropriate, an employer is entitled to rely significantly on an employee's bad record to assess a heavier measure of discipline, it is only fair that a union be entitled to plead an exemplary record in substantial mitigation, particularly in a case where an employee is not entirely or solely to blame for what has transpired.

Having regard to the grievor's past record and good service, to the fact that the incident occurred on territory where he had never worked before, and that the movement's transgression against the Rule 266 limits was effectively directed by his conductor, I am satisfied that a written reprimand reminding Mr. Dillon of the importance of clarifying the existence of a Rule 266 authority with his conductor would have been sufficient in the circumstances.

The grievance is therefore allowed, in part. The thirty demerits assessed against the grievor's record shall be removed, forthwith, with a written reprimand to be substituted.

March 12, 1993

(Sgd.) MICHEL G. PICHER

ARBITRATOR