CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2470
Heard in Montreal, Wednesday, 13 April 1994
concerning
Canadian Pacific Limited

and
Canadian Council of Railway Operating Unions [United Transportation Union]

DISPUTE:

Dismissal of Trainperson G.L. Fuoco of Revelstoke, B.C., for violation of operating rules that resulted in a collision with a stationary freight train, between Tappen and Notch Hill on the Shuswap Subdivision, April 2, 1992.

JOINT STATEMENT OF ISSUE:

On April 2, 1992, Extra 5580 West collided with Extra 5801 West at mileage 78 on the Shuswap Subdivision.

Following the resulting investigation into the incident, Trainperson Fuoco, Conductor Phillips and Engineer Lind were disciplined for rules violations.

The Union appealed the discipline to Trainperson Fuoco on the grounds that: (a) there was not sufficient proof of rules violations; (b) the discipline assessed was too severe; (c) the Company is in violation of article 32, Investigation and Discipline, and Appendix B-32 of the collective agreement.

The Union contends that a misapplication of Appendix B-32 of the collective agreement resulted in a violation of Trainperson Fuoco's rights to a fair hearing and as a result no discipline should have been issued. The Union has requested that the discipline assessed to Mr. Fuoco should be removed or reduced, and that the grievor be reinstated into Company service without loss of seniority, and with full compensation for wages and benefits for all time subsequent to his dismissal.

The Company has declined the Union request.

FOR THE UNION : FOR THE COMPANY:
(SGD.) L. O. Schillaci(SGD.) R. Wilson
General Chairperson FOR: General Manager, Operations & Maintenance, HHS

There appeared on behalf of the Company:
R. E. Wilson- Labour Relations Officer, Vancouver
R. N. Hunt - Labour Relations Officer, Montreal
J. S. McLean- Manager, Labour Relations, Toronto
C. F. Hackh - S&C Supervisor, Vancouver
S, M. Bromley - Manager, Operations, Calgary
B. J. Lockhart - Manager, Training, Toronto
And on behalf of the Union:
D Ellickson - Counsel, Toronto
L. O. Schillaci - General Chairperson, Calgary
D. A. Warren- General Chairperson, Toronto
S. Keene - Vice-General Chairperson, London
T. G. Hucker- International Vice-President, BofLE, Ottawa
G. L. Fuoco - Grievor

AWARD OF THE ARBITRATOR

In light of the material filed, the Arbitrator is satisfied that Trainperson Fuoco failed to properly call signals 745N and

767N. The first signal displayed clear to stop, and was called as clear by the grievor, while the second displayed a restricting signal, and was also called as clear. The material discloses that in respect of the second signal, Signal 767N the locomotive engineer who was in the cab with the grievor could not see the signal, and was compelled to rely on the grievor's call. In the result, the grievor's movement, Extra 5580 West, in work train service, went through the restricting signal and collided with the tail end of Extra 5801 West at Mile 78 of the Shuswap Subdivision. While there were no serious physical injuries resulting from the collision, the rear most grain car on Extra 5801 West, and the head end locomotive unit on the grievor's train suffered extensive damage, totalling in excess of $300,000.00.

It is not disputed that the grievor was deserving of discipline. As a member of the crew overseeing the movement of his work train, he was responsible for accurately calling any signals of which he was aware. The issue of substance, however, is the appropriate penalty in the circumstances. The record reveals that the locomotive engineer who shared the cab with the grievor was not discharged, but rather was demoted to yard service. This, the Company submits, is justified, in part, by the fact that the locomotive engineer did not have a line of vision to the final restricting signal, and was compelled to rely on the grievor's call. It also submits that the locomotive engineer's twenty-two years of service have a bearing on the decision not to terminate his employment. The record also reveals that the conductor of the grievor's train, Mr. M.G. Phillips, was assessed thirty demerits as a result of the collision. The evidence discloses that he did not exercise any degree of vigilance with respect to the signals in question, although he could have done so from his position in the caboose of the nine car work train.

This case is not without some difficulty. The grievor is an employee of seven years' service, who cannot invoke the longevity of his employment as a mitigating factor. It is also not disputed that he was the person in the cab of the locomotive responsible for properly seeing and calling the final restricting indication at Signal 767N.

In the Arbitrator's view, however, there are grounds for concern with respect to the distribution of responsibility as among the members of the crew. Perhaps most significantly, it is not disputed that Locomotive Engineer R.G. Lind had, like the grievor, a clear view of Signal 745N, which displayed a "clear to stop" indication. Like Mr. Fuoco, Mr. Lind, by his own admission, called Signal 745N as "clear" when it was not. Bearing in mind that a locomotive engineer has been recognized by prior decisions of this Office as bearing a greater degree of responsibility for train movements than does a trainperson, it seems undeniable that but for the error committed by the locomotive engineer in respect of the approach signal, the collision would have been avoided. However Mr. Lind was not discharged, but was demoted to yard service.

In the Arbitrator's view this is a case in which the principles of shared responsibility as among members of a train's crew, and the equitable assessment of discipline, having regard to their respective levels of responsibility as reflected in CROA 482 and 1479, have some application. While Trainperson Fuoco is

not a long service employee, his disciplinary record over seven years of service does not suggest any serious problem with respect to the observance of running rules. For close to four years prior to the incident giving rise to his discharge, Mr. Fuoco had a discipline free record.

While I do not believe that the decision of the Company was unreasonable in all of the circumstances, I am persuaded, having particular regard to the treatment of the other two employees involved, most particularly the locomotive engineer whose failure to observe a critical signal was equal to that of the grievor, I am inclined to the conclusion that this is an appropriate case for the substitution of a lesser penalty. In so doing, I am of the view that the reinstatement into employment of the grievor, without compensation, which is the equivalent of the assessment of a suspension for a period of two years, will have the desired rehabilitative effect, and will place him in a position of greater relative fairness in respect of the other members of his crew, even allowing for his shorter years of service. Mr. Fuoco must appreciate, however, the gravity of what occurred and the critical importance of avoiding any similar circumstance in the future.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment, without compensation or benefits, and without loss of seniority. The grievor's reinstatement shall be subject to the discretion of the Company as to whether he should be returned to road or to yard service.

15 April 1994 _____

MICHEL G. PICHER
ARBITRATOR