

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2479

Heard in Montreal, Thursday, 12 May 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS [UNITED TRANSPORTATION UNION]

DISPUTE:

Assessment of forty demerits on March 12, 1993 to Conductor P. Champagne of Melville, Saskatchewan for failure to follow written instructions of a supervisor which resulted in the delay of Train 203-12 at Melville on February 16, 1993.

JOINT STATEMENT OF ISSUE:

On February 16, 1993, Conductor Champagne took charge of Train 203-12 at the east end of the Melville Yard where a brake test was performed. After the train had been fuelled at the east end of the yard, Conductor Champagne attempted several times to verify a dial tone on his radio but was unsuccessful. Conductor Champagne obtained a second radio from the yardmaster and again attempted to verify a dial tone on his radio but was unsuccessful. As a result of Conductor Champagne's attempts to ensure he had a working radio, the Company alleges Train 203-12 was delayed in leaving the Melville Yard.

Subsequently, on March 12, 1992 Conductor Champagne was assessed 40 demerits for failure to follow written instructions of a supervisor which resulted in a delay to Train 203-12 at Melville on February 16, 1993.

It is the Company's position that Conductor Champagne had been advised on previous occasions not to test his radio while working on a conductor only train and refused to follow those instructions which the Company alleges resulted in delay to Train 203-12 at Melville on February 16, 1993.

The Union appealed the discipline on the grounds that: (1) Conductor Champagne had not been given a fair and impartial investigation in accordance with the collective agreement; (2) Conductor Champagne was taken off the working board in violation of the collective agreement; (3) the imposition of 40 demerits was not warranted in all circumstances; and (4) alternatively, 40 demerits was excessive in all the circumstance. The Union is also disputing the Company's statement of Conductor Champagne's record of demerits.

The Company denied the Union's request.

FOR THE UNION:

(SGD.) J. W. ARMSTRONG

GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) G. BLUNDELL

FOR: SENIOR VICE-PRESIDENT, WESTERN CANADA

There appeared on behalf of the Company:

B. Laidlaw	_ Labour Relations Officer, Edmonton
R. Pelesh	_ District Superintendent Transportation, Saskatoon
R. Hedley	_ Project Manager, Transportation Services, Edmonton
J. Carron	_ Counsel, Montreal

And on behalf of the Union:

D. Ellickson	_ Counsel, Toronto
J. W. Armstrong	_ General Chairperson, Edmonton
L. H. Olson	_ President, UTU-Canada, Ottawa
B. Henry	_ Vice-General Chairperson, Edmonton
P. Champagne	_ Witness
P. Champagne	_ Grievor

AWARD OF THE ARBITRATOR

The material in the case at hand discloses that on February 16, 1993 Mr. Champagne did cause a delay to the departure of Train 203-12 at Melville. This occurred because of the grievor's insistence on testing his hand held radio by verifying that its dial tone could be received by the Rail Traffic Controller. During the course of the conversation which ensued with RTC Laurie Fulmes, Mr. Champagne was specifically reminded that he was not to conduct a radio check with the RTC.

The Company maintains that it was unnecessary for the grievor to conduct a radio check with the RTC in the circumstances. According to its submission, Mr. Champagne was aware of that fact and could have checked his radio for tone by communicating with another radio, which would have been the proper procedure in the circumstances. In the Company's view Mr. Champagne was, at the time in question, under a clear obligation to follow the directives given to him by both the RTC and, previously, by his own supervisors.

The grievor, and the Union on his behalf, take the position that Mr. Champagne was motivated by a concern for safety, and in the circumstances was entitled to insist on following the procedure which he did. The Union relies, in part, on the provisions of article 147.4(d) of the collective agreement which are as follows:

147.4(d) Each conductor and train service employee on a caboosless train shall be provided with an operational portable two-way radio, at least one of which shall have dispatcher tone capabilities before leaving a crew change point.

The Arbitrator is satisfied that it was within the prerogatives of the Company to determine the appropriate method for a conductor to test the tone capabilities of a portable two-way radio. I am satisfied on the material before me that the radio could have been tested in the manner suggested by the Company, and that it was not necessary, from a strict standpoint, for Mr. Champagne to communicate with the RTC to verify that his radio had the necessary tone capabilities. In the result, this was a circumstance in which he should, notwithstanding his own view, have followed the "obey now - grieve later" principle. Unfortunately, the record of this incident, including the answers provided by Mr. Champagne during the course of his investigation, suggests a degree of intransigence, if not combativeness on his part, which tends to lead him into situations of undue confrontation with persons in authority.

In the result, the Arbitrator is satisfied that the Company had just cause for the assessment of discipline. The sole issue, therefore, is the appropriate measure of the penalty that should have been applied in the circumstances. In light of the Arbitrator's decision in **CROA 2478**, Mr. Champagne would have had five demerits outstanding on his record as of February 16, 1993. In the circumstances, and having particular regard to his twenty-seven years' service, I am satisfied that the assessment of forty demerits was clearly excessive in the circumstances. In my view, in light of the grievor's record, including a deliberate disregard of a Company directive in 1992, thirty demerits would have sufficed to convey to the grievor the need to conform procedures in respect of testing his radio. Upon a review of the record I am not satisfied that there was any violation of the grievor's rights in respect of a fair and impartial investigation in conformity with the requirements of the collective agreement.

For the foregoing reasons the grievance is allowed, in part. The grievor's record shall be amended to reflect the assessment of thirty demerits for the incident of February 16, 1993.

13 May 1994

MICHEL G. PICHER
ARBITRATOR