CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2543
Heard in Montreal, Thursday, 10 November 1994
concerning
Canadian Pacific Limited
and
Canadian Council of Railway Operating Unions (United Transportation Union)
DISPUTE:
Discipline assessed to and dismissal of Yard Helper I.L. Beebe of Coquitlam, B.C.
JOINT STATEMENT OF ISSUE:
On September 6, 1993, Mr. Beebe received a Form 104 advising him that his record was debited with 30 demerit marks for failing to properly inspect equipment prior to coupling to, and moving cars, resulting in extensive property damage to a customer facility; a violation of CROR Rules 106(d) and 113, at Western Assembly Track FWC, Mile 111.9, Cascade Subdivision, August 11, 1993. On the same day, he was also issued a second Form 104 advising him that he had been dismissed for an accumulation of demerits under the Brown System of Discipline.
The Union's position is that the Corporation has failed to provide sufficient evidence to prove that Mr. Beebe's actions on the day in question did, in fact, violate CRO Rules 106(d) and 113. If no violation is proven, then no discipline can be assessed and no dismissal could have taken place.
The Union is asking that Mr. Beebe be reinstated to his former position without loss of seniority and with payment for time lost and all benefits.
The Corporation has refused this request and considers the discipline warranted and justified.
FOR THE UNION : FOR THE COMPANY:
(SGD.) L. O. Schillaci(SGD.) M. E. Keiran
General Chairperson FOR: General Manager, Operation & Maintenance
There appeared on behalf of the Company:
M. E. Keiran– Manager, Labour Relations, Vancouver
R. M. Forsberg – Manager, Operations, Vancouver
G. Chehowy – Labour Relations Officer, Montreal
And on behalf of the Council:
L. O. Schillaci – General Chairperson, CCROU(UTU), Calgary
B. Henry – Vice-General Chairperson, CCROU(UTU), Calgary
G. Hallé – Canadian Director, BofLE, Ottawa
B. E. Wood – General Chairman, CCROU(BLE), Halifax
R. J. Toole – Special Representative, Canada, BofLE, Brookfield
I. L. Beebe – Grievor

AWARD OF THE ARBITRATOR
The material before the Arbitrator establishes that substantial damage was caused to the doors of a customer's warehouse as a result of an error committed by Yard Helper Beebe while removing cars from the warehouse on August 11, 1993. It appears that a loading plate was still attached to one of the cars, and that it struck the doorway, causing in excess of

$40,000.00 in damage. It is common ground that Yard Helper Beebe did not inspect the car in question prior to the movement which resulted in the damage. It also appears that the method of coupling to and moving the cars on the date in question with the yard foreman stationed outside the warehouse at a switch, the locomotive engineer at the controls of his engine and the yard helper inside the warehouse had previously been followed, on a routine basis, without incident. Evidence obtained from the yard foreman confirms that he was aware that the cars being lifted from the warehouse were not specifically inspected by the yard helper, nor does it appear that he issued any directive to the contrary.

The assessment of demerits against the grievor, resulting in his dismissal for accumulation, was based on a violation of CROR Rule 106(d) which generally charges crew members with operating in conformance with the rules. The specific rule infraction alleged against Mr. Beebe is violation of CROR rule 113 which is as follows:

113 (a)Before coupling to equipment at any point, care must be taken to ensure that such equipment is properly secured.

(b) Before coupling to or moving equipment being loaded or unloaded, all persons in or about such equipment must be notified. Vehicles and loading or unloading devices must be clear.

(c) Before coupling to or moving service equipment employees occupying such equipment must be notified and attachments secured.

The Union's representative suggests that there was in fact no violation of Rule 113 in the circumstances disclosed. The Arbitrator cannot agree. Assuming, without finding, that sub-paragraph (b) speaks directly to the events in question, it must, I think, be taken as implicit that train crews coupling to or moving equipment being loaded or unloaded must make whatever inspections are necessary to ensure that vehicles and loading or unloading devices are clear of such equipment. Moreover, the Arbitrator is satisfied that the broader language of sub-paragraph (a) would also apply, as it speaks to coupling to equipment "at any point". I am satisfied, in the case at hand, that Yard Helper Beebe did not take care to ensure that the equipment which his crew removed from the warehouse was properly secured, and specifically, that he failed to ensure that a loading plate was removed from one of the cars being moved.

There can be no question that the grievor rendered himself liable to discipline, and that his violation of the rules was serious in nature. The Arbitrator must agree with the Company that the fact that grievor's crew had formed the habit of moving equipment from the customer's warehouse without ensuring that the cars being moved were secure is no defence to their actions resulting in the accident of August 11, 1993. The only issue of substance is the penalty appropriate in the circumstances. When regard is had to that issue there are factors to be considered in mitigation. Mr. Beebe is an employee of relatively long service, having commenced employment with the Company in 1977. His prior disciplinary record is not positive, as it stood at forty demerits prior to the incident of August 11, 1993. He had previously been assessed ten and thirty demerits, respectively, for violations of CROR rules 104, 114 and 115, resulting in side

collisions, and in one case the derailment of a car. He was in an obviously precarious position with respect to his record and knew, or reasonably should have known, that any further discipline could have the most serious of consequences.

However, when regard is had to the incident in question, the Arbitrator has concern for the relative treatment of the other members of Mr. Beebe's crew, and in particular, the disciplinary response directed to the yard foreman, who was responsible for the movement in question. It is common ground that Yard Foreman E. Biljan, who admitted that he knew that the switching operation was being performed in the manner which it was, received a verbal admonishment, as did the locomotive engineer. I find it difficult to reconcile the disciplinary treatment of Mr. Beebe and that of two other members of his crew, in particular the yard foreman who under CROR rule 106(d) bears primary responsibility for the safe operation of the equipment in his charge. That is particularly so where, as in the case at hand, Yard Foreman Biljan admits that the operation proceeded as it did with his full knowledge and acquiescence. That observation does not, however, relieve Mr. Beebe of his responsibility as the person in nearest proximity to the equipment. In the circumstances I am satisfied that the assessment of discipline against Mr. Beebe could properly be greater than that assessed against Mr. Biljan. However, the difference between a verbal admonishment and thirty demerits resulting in discharge is difficult to justify. In the circumstances I am satisfied that a reduction of penalty, albeit to a period of substantial suspension, is appropriate.

For the foregoing reasons the Arbitrator directs that the grievor be reinstated into his employment, without compensation or benefits, and without loss of seniority. His disciplinary record shall stand at forty demerits.

11 November 1994 _____

MICHEL G. PICHER
ARBITRATOR