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Canadian Railway Office of Arbitration

Case No. 2588

Heard in Montreal, Wednesday, 15 February 1995

concerning

Canadian National Railway Company

and

Canadian Council of Railway Operating Unions

[Brotherhood of Locomotive Engineers]

ex parte

Dispute:

Assessment of 30 demerits and time out of service (32 days) to count as suspension to locomotive engineer L.G. Munro for violation of CROR 311(b).

Ex Parte Statement of Issue

On February 24, 1994, Mr. Munro was employed as locomotive engineer on Train 511. During this tour of duty, Train 511 entered the limits of Foreman Zimak between mile 9 and mile 10 without permission or instructions, in violation of CROR 311(B).

On March 2, 1994, Mr. Munro was required to provide a formal statement in connection with the incident that occurred on February 24, 1994 and was thereafter assessed 30 demerits and a 32 day suspension.

The Brotherhood appealed the discipline on the following grounds: (1.) The Company violated article 71.2 and article 71.6. (2.) There were various mitigating factors. (3.) The discipline was discriminatory and unjust. (4.) In the alternative, too severe.

The Company declined the Brotherhood's appeal.

for the council:

(sgd.) C. Hamilton

General Chairman

There appeared on behalf of the Company:

C. Morgan - Labour Relations Officer, Toronto

R. Bateman - Human Resources Officer, Toronto

J. J. Campbell - Manager, Train Services, London

M. Oakley - Project Officer, Toronto

And on behalf of the Council:

C. Hamilton - General Chairman, Toronto

E. Deboer - Local Chairman, London

award of the Arbitrator

The evidence before the Arbitrator confirms that the assignment of Train 511 on February 24, 1994 was relatively complex and difficult, as it involved moving through territory between London and Sarnia which is normally the subject of relatively numerous OCS clearances and other rule 42 and rule 43 restrictions. It is not disputed that Locomotive Engineer Munro's train violated CROR rule 311(b) by entering the limits of Foreman Zimak, without the proper clearance. Upon realizing the error committed, Locomotive Engineer Munro brought his train to an emergency stop, without accident or damage. Standing alone the grievor's actions merit a serious degree of discipline, and absent mitigating circumstances, the thirty demerits assessed by the Company would be justified and in keeping with similar cases in the past. For example, in CROA 2377 two locomotive engineers were found by the Arbitrator to be deserving of the assessment of

thirty demerits and a two week suspension for a violation of CROR rule 309(b) as a result of penetrating into the limits of a work train.

In the case at hand, however, there are certain mitigating factors to be considered. As noted above, the territory in question requires the undivided attention of the crew because of its complexity. On the day in question Locomotive Engineer Munro and Conductor A.L. Sproule were accompanied in the cab by Manager of Train and Engine Service M.R. Oakley. It is common ground that Mr. Oakley was new to the territory as a supervisor, and was arguably unfit for duty, having worked with little or no rest for some thirty hours. Mr. Oakley's presence in the cab caused the brakeman, whose task is normally to ride in the cab and call restriction and clearance reminders, to be moved to a position in the third locomotive unit. Unfortunately, during the course of the trip Mr. Oakley engaged in unnecessary conversation with the crew members, questioning them about the efficiency of their switching moves and operations en route. While there is some controversy about this aspect of the evidence, the Arbitrator is satisfied that a degree of argument ensued between Mr. Oakley and Conductor Sproule, causing some distraction to the crew.

The Council submits that the presence of Mr. Oakley was a contributing factor in the error committed by the grievor. In the Arbitrator's view that claim is not without some foundation. A report made by an investigator of the National Transportation Agency contains, in part, the following:

Supervisor

Rule-Based Error

Application of a "BAD" Rule

Inadvisable Rule

It is considered by the investigators that engaging the crew in non-critical conversation during a "busy" work time was inappropriate. The choice that this is a "BAD" Rule is due to the fact that it is never appropriate to discuss non-critical items when the crew is actively involved in the action of a train. The requirement for monitoring crews is inadequate to achieve the goal of ensuring that the crews are performing in an appropriate fashion; there is a high risk associated with using this rule. As in this case, the monitoring of this crew breached the established procedures in that it distracted the crew from its duties.

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Crew

Distractions

There were a number of distractions for the crew. They were in white-out conditions which made it difficult to see the signals; the Supervisor was riding the train and engaging the crew in non-critical conversations; radio communications, i.e. the Supervisor made two radio calls, the Hot Box Detector Operator made a call to another train to indicate that they experienced a hot wheel; and the crew itself had been broken up as the brakeman had been told to ride in the third unit.

Potential for Conflict

The crew was possibly predisposed to conflict as the Superintendent [sic] was interested in exerting his authority as a supervisor and the crew might not accept the authority of the Supervisor.

Excessive Workload

The job was stressful as it was a busy traffic location, i.e. many trains as well it was busy with many work crews and slow orders, etc.

As the above passages reflect, to the satisfaction of the Arbitrator, it would appear that there was simply too much going on in the cab of the lead locomotive at the time of the unfortunate rule infraction which transpired. While that does not excuse the responsibility of the locomotive engineer, or indeed of the conductor, it is a factor which can legitimately be taken into account when regard is had to the appropriate penalty. The material before the Arbitrator discloses that the supervisor in question was also disciplined, and suffered a demotion and permanent loss of income as a result of his involvement in the rules violation. On the whole, however, the Arbitrator is not persuaded that the responsibility of Mr. Munro should be placed on the same level as in other cases where similar mitigating factors may not have been present (e.g., CROA 2377). It is also worthy of note that Mr. Munro is a good employee of twenty-four years' service without any prior cardinal rules infractions.

The Council alleges that the Company violated the provisions of article 71 of the collective agreement in respect of conducting a fair and impartial investigation. The Arbitrator can see no substance to this allegation, which appears to be based on conversations which may have taken place on the site of the event, immediately after it occurred. There must be some latitude in the Company to conduct conversations with persons involved in an incident, in a preliminary manner, before determining whether a formal investigation should be convened. Absent obvious bad faith or attempts to avoid the provisions of the collective agreement, normal communications of that kind do not bring into play the more restrictive standards which obtain during the course of a formal investigation under the provisions of the collective agreement. (see CROA 1737 and 2573) I am satisfied that there was no violation of the requirements of article 71 in the case at hand, and the Council's position in that regard must be dismissed.

For all of the foregoing reasons, in light of the mitigating factors disclosed, the Arbitrator deems it appropriate to reduce the penalty assessed. The grievor's record shall be amended to reflect the assessment of twenty demerits for the rules infraction, and his period out of service shall be reduced to two weeks, with compensation for wages and benefits lost.

17 February 1995 _____

MICHEL G. PICHER
ARBITRATOR