

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2727

Heard in Calgary, Tuesday, 14 May 1996

concerning

CANADIAN PACIFIC LIMITED

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]**

DISPUTE:

The assessment of 40 demerit marks to Conductor D.P. Allen and Trainman J.R. Fournier of Kamloops, British Columbia.

JOINT STATEMENT OF ISSUE:

On December 23, 1993, Conductor Allen and Trainman Fournier were each assessed 40 demerit marks for:

failing to ensure your train was operated in a manner which would permit your train to stop short of a signal indicating STOP, resulting in your train passing a signal indicating STOP, a violation of CROR Rules 34(b), 410 and 429, Extra 9010 East, Signal 486, Thompson Subdivision, November 25, 1993.

The Council contends that the circumstances leading up to this incident mitigate the responsibility that should be placed on the train crew, and asked to have the discipline removed in its entirety or drastically reduced.

The Company has declined the Council's request.

FOR THE COUNCIL:

(SGD.) L. O. SCHILLACI
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. E. WILSON
FOR: DISTRICT GENERAL MANAGER, PRAIRIE DISTRICT

There appeared on behalf of the Company:

L. J. Guenther	– Labour Relations Officer, Calgary
R. E. Wilson	– Manager, Labour Relations, Calgary
S. Seeney	– Labour Relations Officer, Calgary
J. Copping	– Labour Relations Research Officer, Calgary
M. J. Benedict	– Manager, Operations, Kamloops
R. D. C. Palmer	– Engineer, S&C, Safety Measures, Calgary

And on behalf of the Council:

J. Padze	– Local General Chairman, Kamloops
B. McLafferty	– Sr. Vice-General Chairman, Moose Jaw
K. Jeffries	– Vice-General Chairman, Cranbrook
D. Finnson	– Secretary/Treasurer, Saskatoon
S. Keene	– Vice-General Chairman, London
D. P. Allen	– Grievor
J-R Fournier	– Grievor

AWARD OF THE ARBITRATOR

In the instant case the Company does not dispute the assertion of the grievors that they truly believed that they saw a restricting signal as they approached Signal 486 on the Thompson Subdivision on November 25, 1993. More significantly, during the course of the arbitration one of the Company's own representatives confirmed that on another occasion, under similar circumstances, he also observed a yellowish tinge emanating from the lowest of the three lights of this signal, giving the impression of a red-red-yellow aspect notwithstanding that the signal was in fact showing three red lights, indicating stop. The Council asserts that the same thing occurred to the grievors.

Upon a careful review of the record, the Arbitrator is not satisfied that the Company has discharged the burden of proof which is upon it in the instant case. While it is true that the grievors' movement passed the stop signal by some eighteen inches, the objective evidence reveals that the handling of their locomotive was consistent with their own reading of a restricting signal, a condition which, I am satisfied on the balance of probabilities they truly believed they observed as they approached the signal.

In the circumstances, while technically a violation of Rule 429 may have occurred, this is not a case which justifies the assessment of forty demerits. If the grievors can be said to have been at fault, and I am satisfied that to some degree they can, it is that they failed to maintain a continuous observation of the signal. If they had, it is likely that they would have discovered their error of perception in sufficient time to avoid passing the stop signal.

Given the length and quality of the grievors' prior service, I am satisfied that the assessment of ten demerits is more appropriate in the circumstances. The grievance is therefore allowed in part. The Arbitrator directs that the grievors' records be amended to reflect the assessment of ten demerits for the failure to stop at Signal 486, Thompson Subdivision, on November 25, 1993.

May 17, 1996

(signed) MICHEL G. PICHER
ARBITRATOR