

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2741

Heard in Calgary, Thursday, 16 May 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[BROTHERHOOD OF LOCOMOTIVE ENGINEERS]**

DISPUTE:

Appeal the assessment of 25 demerits and time out of service to Locomotive Engineer G.L. Ager for violation of CP Timetable No. 100, Page Subdivision footnotes, Item 5.2.

JOINT STATEMENT OF ISSUE:

On August 31, 1993, Locomotive Engineer Ager was assigned to Train 204, which was required to detour over CP Rail trackage. Mr. Ager proceeded on CP Rail trackage on a signal indication without clearance authority as required by CP Timetable No. 100, Page Subdivision footnotes, Item 5.2.

Following an investigation into the incident, Locomotive Engineer Ager was assessed 25 demerits and time held out of service to count as suspension.

The Brotherhood contends that Mr. Ager was following an accepted long-standing practice concerning this routine detour movement. It is further suggested that Mr. Ager proceeded under the instructions and authority of a Company officer.

The Company maintains that the grievor was justly dealt with and has declined the Brotherhood's request.

FOR THE COUNCIL:

(SGD.) M. W. SIMPSON

FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. RENY

FOR: SENIOR VICE-PRESIDENT, CN WEST

There appeared on behalf of the Company:

S. Blackmore	– Labour Relations Assistant, Edmonton
R. Reny	– Labour Relations Officer, Edmonton
J. Torchia	– Manager, Labour Relations, Edmonton
J. Dixon	– Labour Relations Officer, Edmonton
B. Barber	– Labour Relations Officer, Edmonton
J. Raynard	– Superintendent, Transportation

And on behalf of the Council:

W. A. Wright	– General Chairman, Saskatoon
M. W. Simpson	– Sr. Vice-General Chairman, Saskatoon
M. King	– Local Chairman, Prince George
D. Shewchuk	– Vice-General Chairman, Vancouver

AWARD OF THE ARBITRATOR

The evidence establishes, beyond any doubt, that Locomotive Engineer Ager did violate Item 5.2 of the footnotes of CP Rail Timetable No. 100, by entering the Page Subdivision without having obtained clearance for the Mission and Cascade Subdivisions. Item 5.2 provides as follows:

A train or engine from CN Rail at Page must have Clearance authority to operate on Mission and Cascade Subdivision, and may leave Page without obtaining additional Clearance.

The Council does, however, raise mitigating circumstances in respect of what transpired at Page. The evidence discloses that the Page Subdivision was being used as an access route to detour traffic from CN's Yale Subdivision onto CP's Cascade Subdivision as a result of a detour occasioned by bridge repairs. CN crews, which required the assistance of a CP pilot, were generally instructed to meet their pilot at a location beyond Page, generally referred to as the "red barn" at Gladwin Road when travelling eastward. The evidence discloses that signals governing the entrance to the Page Subdivision are controlled by the CN Yale Subdivision Rail Traffic Controller. On the occasion of the incident in question, the signals displayed a restricting indication, which would allow the grievor's train to proceed. It appears that on some occasions the clearance which a train would nevertheless require before leaving Page and entering the Page Subdivision might be in the possession of the CP pilot who would be awaiting the movement at Gladwin Road. Because it was often necessary to remove a train entirely from the main track of the Yale Subdivision, it would be necessary to advance the train beyond Page into the Page Subdivision to the point where the pilot would be picked up, or beyond.

The record does indicate that there was a degree of confusion in the minds of CN locomotive engineers with respect to the necessity to first obtain clearance before entering the Page Subdivision, given that they would encounter a permissive signal at Page, and that their pilot might well be in possession of such clearance. It also appears that such movements may have gone undetected on a number of occasions by the CP Rail Traffic Controller as he or she might have issued a number of clearances to eastbound trains, and could be unaware that a given train entering the Page Subdivision did not in fact obtain the clearances as contemplated under Item 5.2.

In the Arbitrator's view, the circumstances which operated at Page at the time of the incident in question did give rise to a degree of ambiguity. I am not persuaded, however, that the language of Item 5.2 is, on its face, as ambiguous as the Council would have it, or as Conductor Wheeler asserted it was, during the course of his investigation. The language of Item 5.2 seems clear in directing an eastbound train crew that they could not leave Page, a precise geographic point, without obtaining clearance for the Mission and Cascade Subdivisions. However, the fact that a pilot assigned to their movement might be in possession of such clearance, and the degree of uncertainty which surrounded this issue, apparently influencing the practice of a number of other CN locomotive engineers whose similar movements appear to have been conducted in close proximity to Company supervisors who were temporarily stationed in a nearby trailer, does raise questions which mitigate the severity of the infraction.

A further mitigating factor of some weight is the grievor's prior service. At the time of the incident Locomotive Engineer Ager had close to twenty years' service with the Company during which time he did not incur any discipline whatsoever. In all of the circumstances the Arbitrator is satisfied that this is an appropriate case for a reduction of penalty.

The grievance is therefore allowed, in part. The Arbitrator directs that the Company substitute a penalty of ten demerits to the record of the grievor for the violation of Footnote Item 5.2 of the CP Timetable No. 100, Page Subdivision, and that he be compensated all wages and benefits lost in relation to the time for which he was held out of service.

May 17, 1996

(signed) MICHEL G. PICHER
ARBITRATOR