

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2752

Heard in Montreal, Thursday, 13 June 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
RAIL CANADA TRAFFIC CONTROLLERS**

DISPUTE:

Appeal the dismissal of Ms. J.J. Tupling.

JOINT STATEMENT OF ISSUE:

On May 17, 1995, Ms. J.J. Tupling was discharged from the Company's service for inability to safely and consistently perform the duties of a Rail Traffic Controller pursuant to the investigation of 21 April 1995.

The Brotherhood appeals the discharge on the basis that the Company did not establish a violation of any portion of the RCTC Operating Rules and that Ms. J.J. Tupling be reinstated with full compensation and seniority. The Brotherhood contends that Ms. J.J. Tupling complied with all operating instructions and based on the evidence being generated by the tapes in question, she was under no obligation to stop the train. As a result, Ms. J.J. Tupling did not violate any portion of the RCTC Operating Rules.

The Brotherhood maintains that Ms. J.J. Tupling performed her duties in a satisfactory manner and in accordance with instructions received and normal operating practices.

Further, the Brotherhood contends that the discipline imposed was too severe in the circumstances and requests it be modified.

The Company declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:

(SGD.) A. F. OWENS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A. E. HEFT
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

K. R. Peel	– General Counsel - Ontario, Toronto
C. Morgan	– Labour Relations Officer, Toronto
R. F. Morissette	– Manager, RTCC, Toronto
R. C. Johnston	– SPV, S&C Control Centre, Toronto
R. Bateman	– Assistant Manager, Labour Relations, Toronto

And on behalf of the Brotherhood:

J. L. Shields	– Counsel, Ottawa
G. Jones	– Counsel, Ottawa
A. F. Owens	– General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The evidence discloses that on the morning of April 14, 1995, the grievor was on duty, assigned to the hot box detector position in the Rail Traffic Control Centre in Toronto. Her work involved monitoring all rail traffic on the Great Lakes District, including vigilance in respect of heated axles, wheels and journals as communicated through some 113 remote hot box detection devices located in the field. At 10:21 that morning train A219, operating between Hornepayne and Armstrong derailed as a result of a burnt journal on the twelfth car, at mile 124.4 of the Caramat Subdivision. Following an investigation the Company concluded that the grievor failed in her duty of vigilance with respect to monitoring the train in question, as a result of which she was discharged from the Company's service.

The evidence establishes that in fact the grievor did receive a hot box signal earlier with respect to the twelfth car of the train as it passed the hot box detector at Arms, located at mile 67.50. She immediately directed the train to stop, causing an inspection of the journal by the train crew, which the train crew did at or about mile 72.0.

Not long afterward, at 09:44, train A219 passed the hot box detector at Seagram, at mile 95.70 of the Caramat Subdivision. This triggered a hot box alarm in the computer console adjacent to the grievor's desk, generating a printed paper tape for the immediate examination of the operator on duty. The evidence, including time coded recordings of the grievor's telephone conversations, confirms that when the signal was received from Seagram she was engaged in an extended personal telephone conversation with a friend who is also a Company employee. The evidence further indicates that she made other personal telephone calls in the time surrounding this event, for a total elapsed time of some twenty-five minutes.

During her tour of duty the grievor was subject to a number of requirements of the RTC Operating Guidelines (TP105) including item 3.1 of the General Requirements, paragraph (1) which states in part:

Monitoring of hot box detector system must take priority over all other assigned duties. Hot box detector systems must be monitored continuously. ...

The CROR General Rules, Special Instruction (1) states:

Employees in any service connected with the movement of trains or engines are prohibited from engaging in non-railway activity which may in any way distract their attention from the full performance of their duties.

Further, section 3.1 of paragraph (5) of the Guidelines directs a hot box operator as follow:

When a tape is produced, the pen record must be examined immediately by the HBD operator. ...

Upon a review of the evidence the Arbitrator is satisfied that the grievor did fail to give adequate attention to her responsibilities, and specifically failed to examine the hot box signal tape generated when train A219 passed the detector at Seagram. Although the Brotherhood sought to adduce evidence to suggest that the grievor did in fact examine the tape, presumably while engaged in her telephone conversation, and saw nothing that would suggest that action should be taken, the objective evidence before the Arbitrator is to the contrary. Firstly, in a telephone conversation immediately following her being advised of the derailment the grievor made a number of statements to the effect that she believed that she must not have been on duty, and must have been away on her break when the train passed Seagram, stating, in part, "... So I don't think I saw it. 'Cause I woulda stopped it, it was high ...". Still later she commented: "I never saw it at Seagram."

In the Arbitrator's view, notwithstanding the denials of the grievor during the course of the Company's investigation, and her assertion that she would have received and examined the tape in question, the Arbitrator is compelled, on the balance of probabilities, to conclude that she failed to do so.

I am also satisfied that the tape in question was such as to bring to her attention, if she did see it as she claims, that the train should be stopped. In this regard I accept the evidence of RTCC Manager R.F. Morissette with respect to the unduly high reading shown on the tape generated by the hot box detector at Seagram. The Arbitrator accepts that comparison of the tape at Seagram with the tape generated earlier at Arms would, contrary to the Brotherhood's submission, suggest that in fact the journal on the twelfth car was heating or, at a minimum, was at the same overheated temperature indicated at Arms. In either circumstance the grievor was under an obligation to stop the train, which she failed to do.

The grievor is an employee of nine years' service with a less than impressive disciplinary record. She was returned to service as a rail traffic controller in the spring of 1994 after a two year disciplinary demotion, following a prior arbitration award in **AH 333**. It appears from the record that on that occasion the grievor failed to report an important abnormality in the operation of signals on the Ruel Subdivision. She was also subject to a Root Cause Analysis exercise in November of 1994 as a result of her involvement in the violation of a Track Occupancy Permit on the Caramat Subdivision.

The position of a rail traffic controller, including the responsibilities of an operator monitoring hot box detectors, involves a high level of trust. The safety sensitive ramifications of negligence in the performance of the duties of a rail traffic controller charged with overseeing the safe movement of trains over substantial territory is, I think, relatively obvious. The instant case discloses that the grievor, who had been involved in serious rules infractions in the past, negligently failed to carry out her duties in such a way as to allow the crew of train A219 to be properly advised of the precarious situation of their train, and the need to stop immediately. While the derailment that ensued was relatively minor, and no personal injury resulted, the consequences might, in another circumstance, have been far more serious.

Having regard to all of the factors considered, including the length and quality of the grievor's prior service, the Arbitrator is not persuaded that this is an appropriate case for a substitution of penalty. The grievance must therefore be dismissed.

14 June 1996

(signed) MICHEL G. PICHER
ARBITRATOR