

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2856

Heard in Calgary, Thursday, 15 May 1997

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

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

DISPUTE:

The assessment of 40 demerit marks on August 18, 1995, the assessment of 40 demerit marks on August 2, 1996, and the subsequent dismissal of Trainperson/Yardperson J.F. Spotowski for accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

Trainperson/Yardperson J.F. Spotowski entered service on October 25, 1994.

On August 18, 1995, Trainperson/Yardperson J.F. Spotowski was assessed 40 demerit marks for:

“failing to ensure your movement stopped prior to passing a stop signal resulting in stop signal being passed without authority, for failing to initiate an emergency radio broadcast after passing a stop signal without authority, for failing to request appropriate authorization after passing a stop signal, for failing to properly report the incident; a violation of CROR Rule 429, CROR Rule 606(a), CROR Rule 609, CROR Rule 124, GOI Section 2 Item 1.0(a) and 3.1(a), and CROR General Notice, July 20, 1995, Alyth Yard, Calgary, Alberta.”

On August 2, 1996, Trainperson/Yardperson Spotowski was assessed 40 demerit marks for:

“... your irresponsible work habits, as witnessed by your communicating an incorrect and less restrictive signal indication to your locomotive engineer on Breton Way Freight, which jeopardized the safe movement of your train, as well as the safety of your co-workers, and for failing to make yourself aware of the switching instructions of your movement for the 1500 Lampton Park Assignment, for failing to monitor the switching instructions by radio, and for improperly positioning yourself resulting in your struck by your own movement; a violation of CROR General Notice, Safety and Accident Prevention Code, Form 300-3, Items 1.1(d), 1.1(f), 1.3(k), and 1.4(c) Breton Wayfreight, July 18, 1996, and the 1500 Lampton Park Assignment, July 19, 1996.”

On August 2, 1996, Trainperson/Yardperson Spotowski was also dismissed from Company service for the accumulation of demerit marks under the Brown System of discipline.

The Council contends that a reduction in the discipline issued on August 18, 1995, is warranted based on mitigation and arbitral jurisprudence.

The Council contends that the discipline issued on August 2, 1996, should be removed because the investigation was neither fair nor impartial and the discipline assessed was not supported by the evidence adduced.

The Council has requested that Trainperson/Yardperson Spotowski be returned to service without loss of seniority and with full wages and benefits for all time lost.

The Company has declined the Council's requests.

FOR THE COUNCIL:

(SGD.) L. O. SCHILLACI
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) G. S. SEENEY
FOR: DISTRICT GENERAL MANAGER, PRAIRIE DISTRICT

There appeared on behalf of the Company:

G. S. Seeney	– Manager, Labour Relations, Calgary
R. E. Wilson	– Director, Labour Relations, Calgary
M. E. Keiran	– Manager, Labour Relations, Calgary
R. V. Hampel	– Labour Relations Officer, Calgary
J. C. Copping	– Labour Relations Officer, Calgary
R. M. Smith	– Labour Relations Officer, Calgary

And on behalf of the Council:

D. Ellickson	– Counsel, Toronto
K. Jeffries	– Vice-General Chairman, Cranbrook
B. McLafferty	– Vice-General Chairman, Moose Jaw
A. McCormick	– Local Chairman, Winnipeg
J. F. Spotoski	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that Mr. Spotoski was involved in a serious rules infraction when he did fail to ensure that his movement stopped prior to a stop signal on July 20, 1995 at Alyth Yard. It is not disputed that the curvature of track encountered by the crew as they approached signal 20R caused the locomotive engineer's view of the signal to be obstructed, and he was compelled to rely entirely on the yard foreman and Yard Helper Spotoski for observation of the signal. Further, neither the grievor nor other members of the crew initiated the appropriate emergency radio broadcast when they realized that they had violated the stop signal.

There are no mitigating factors of any substance which, in the Arbitrator's view, would justify a reduction of the forty demerits assessed for the incident of July 20, 1995. It is well established that a cardinal rule infraction of this kind does merit the most serious measure of discipline, absent mitigating circumstances. As indicated in the joint statement of issue, the actions of the grievor involved a compounding of several rules infractions in relation to the single incident, the details of which are not substantially disputed. The Arbitrator cannot, therefore, sustain the grievance as it relates to the forty demerits assessed.

There are two incidents which form the substance of the second assessment of forty demerits against the grievor. The first is an undisputed incident in which he conveyed to the locomotive engineer on the Breton Wayfreight a direction to proceed, notwithstanding that his movement was subject to a dwarf signal which indicated a stop. Only the intervention of the conductor of that train, who had a view of the signal, prevented a serious rules infraction from being committed. The second incident relates to the grievor having improperly positioned himself during yard movements, as a result of which he was hit by a moving car.

The grievor is not a long service employee, having been hired on October 25, 1994. The evidence indicates that at least two fellow workers registered written concerns with the Company, indicating that they did not wish to work with Mr. Spotoski because they considered him to be a danger.

In the Arbitrator's view this is not a case where substantial mitigating factors can be brought to bear in favour of the grievor. All three incidents revealed in evidence, two of which involved the violation or near violation of stop signals, and the third a potential fatality, raise the gravest of concerns with respect to the grievor's employability. Even if the second discipline were reduced to twenty demerits, Mr. Spotoski would still be dismissible for the accumulation of sixty demerits over a relatively brief period of employment.

Further, the Company has placed before the Arbitrator information which, I am satisfied, establishes that Mr. Spotoski was less than honest with Company officers following his termination. It appears that after his discharge he presented himself for an interview with former Manager of Operations, Mr. K.R. Munroe, at Revelstoke, British Columbia. He indicated to Mr. Munroe, who is since deceased, that he was an employee of the Company and was

willing to forfeit his Alberta seniority to hire on at Revelstoke at the bottom of the seniority list. Upon making enquiries as to the grievor's work record with Mr. R.G. Weir, Manager of Operations at Calgary, Mr. Munroe learned that in fact the grievor had been dismissed on August 2, 1996, as a result of the discipline which is the subject of this grievance. As I accept the Company officer's characterizations of the events at Revelstoke, I am left in further substantial doubt as to the general credibility and overall reliability of Mr. Spotowski for continued employment within the railway. In these circumstances, I can see no basis upon which to disturb the result of the discipline assessed against him. For all of the foregoing reasons the grievance must be dismissed.

Dated at Montreal, May 30, 1997

(signed) MICHEL G. PICHER
Arbitrator