

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3066
Heard in Montreal, Wednesday, 15 September 1999
concerning
ONTARIO NORTHLAND TRANSPORTATION COMMISSION
and
UNITED TRANSPORTATION UNION
EX PARTE

DISPUTE:

An appeal of discipline assessed against Conductor K.J. Farrell for his responsibility in a derailment which occurred on June 19, 1998.

COMPANY'S STATEMENT OF ISSUE:

Train 250 (CNR 5677) derailed at mileage 4.3 of the Temagami Subdivision on June 19, 1998. Following an investigation into the matter, Conductor K. Farrell was suspended from service for ninety (90) days for violations of Canadian Rail Operating Rules by exceeding speed restrictions contained in Daily Operating Bulletin #s 169 and 170, Operating Manual Instructions by exceeding equipment speed restrictions and exceeding conditional speeds while handling loaded cars of sulphuric acid.

The United Transportation Union appealed the suspension based on a number of issues and requested that the discipline against Conductor Farrell be set aside and he be made whole for lost earnings and benefits resulting from the suspension.

The Company maintains that the disciplinary suspension is appropriate, that all mitigating factors in Mr. Farrell's favour have been considered and has denied the Union's appeal.

UNION'S STATEMENT OF ISSUE:

Train 250 (CNR 5677) derailed at mileage 4.3 of the Temagami Subdivision on June 19, 1998. Following an investigation into the matter, Conductor K. Farrell was suspended from service for ninety (90) days for violations of Canadian Rail Operating Rules by exceeding speed restrictions contained in Daily Operating Bulletin #s 169 and 170, Operating Manual Instructions by exceeding equipment speed restrictions and exceeding conditional speeds while handling loaded cars of sulphuric acid.

The United Transportation Union appealed the suspension contending that: (1) the Company decided the discipline before an investigation was conducted; (2) Conductor Farrell was disciplined for exceeding speed restrictions which did not exist; (3) the speed restrictions for handling sulphuric acid cars are not clear; (4) Conductor Farrell operated his train in the customary manner; (5) the Company has condoned speeding violations in the past; (6) the discipline is inappropriate and not consistent with that assessed others for similar conduct; (7) there was no

evidence presented at the investigation that speed caused the derailment; (8) the speed recorded information downloaded from CNR 5677 is inaccurate; and (9) proper consideration was not given to Conductor Farrell's long service and exemplary record.

The Union requests that the discipline against Conductor Farrell be reduced and that he be made whole for lost earnings and benefits resulting from the suspension.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) **P. G. KONING**

GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) **M. J. RESTOULE**

FOR: DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

M. J. Restoule	- Manager, Labour Relations, North Bay
L. Marcella	- Director, Human Resources, North Bay
T. McCarthy	- Training Officer, North Bay

And on behalf of the Union:

P. G. Koning	- General Chairman, North Bay
Wm. Ross	- Local Chairperson - Bus, North Bay
K. L. Marshall	- General Chairman (retd), North Bay

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond controversy, that the grievor's train derailed at mileage 4.3 of the Temagami Subdivision on June 19, 1998. While the Union challenges to some degree the accuracy of the information downloaded from the event recorder on the grievor's locomotive, there does not appear to be any dispute that the derailment occurred within an area where his train's permissible speed was reduced to six miles per hour. I am satisfied, on the balance of probabilities, that the grievor's train entered the slow order territory at a speed of twenty-nine miles per hour. The Company's investigation into the cause of the derailment concludes, in my view correctly, that the derailment was caused by the movement's excessive rate of speed. The report contains, in part, the following conclusion:

Cause: Excessive speed into an unstable track structure

NOTE: 6 mph slow order was in place to protect the weak track, however it was unable to sustain the excess speed/braking and resulting force developed by Train 520.

The derailment caused the Company to examine more extensively the record of the grievor's train movements both on train 151 north, June 18, and the return trip of train 250 south, on June 19, when the derailment occurred. The records disclosed that the grievor's movement was in violation of speed restrictions on a number of occasions during both trips, and that the grievor's train proceeded through a number of towns at a rate of speed

well in excess of twenty miles per hour which was then the required speed for carrying dangerous goods through any city, town or village. It is common ground that the grievor's train included loaded sulphuric acid cars and that it travelled through several towns at speeds as high as forty-three miles per hour.

The derailment caused the Company loss in excess of \$200,000.00, and resulted in a substantial delay of passenger service for the period of time the track was out of service. Based on the entire record of violations found to have been committed by the grievor, both outbound on train 151 and returning on train 250, and having particular regard to the seriousness of the derailment which occurred, the Company assessed a ninety day suspension against Conductor Farrell.

The Union does not submit that the grievor should not be subject to discipline. It maintains, however, that given the record of discipline previously assessed for employees involved in overspeed, the better course would have been to assess demerits against Mr. Farrell, albeit in a substantial number. It stresses the grievor's long service, noting that he has been employed by the Company since April of 1965, and the fact that he has never previously been disciplined for speeding violations. The Union also questions to what extent the derailment might have been caused by a "sun kink" in the rail, a fact which would be admittedly undetectable once the derailment occurred.

The Union stresses that in the past the Company has dealt with initial speeding infractions by placing a warning letter on the employee's file. In that regard it points to the example of Engineman Hofferd. It appears that in his case a warning was given for a first speeding infraction, fifteen demerits for a later second infraction involving overspeed, and finally a thirty day suspension when Engineman Hofferd was finally involved in a derailment when his train exceeded a ten mile per hour speed restriction on the Mettagami Spur. The Union asserts that the facts relating to the derailment experienced by Conductor Farrell would justify a similar approach consistent with principles of progressive discipline.

The Arbitrator has some difficulty with that submission. It is, to be sure, true that notions of progressive discipline should generally be applied in the workplace. It is also true, however, that a first infraction of great seriousness can justifiably result in a far heavier penalty than might otherwise be the case. In such matters each individual grievance must be assessed on its own merits, with due regard to all of the elements involved.

The material before the Arbitrator establishes that at the time of the grievor's blatant disregard of the speed limits on the Temagami Subdivision the Company had placed employees on notice that it was commencing a campaign to more strictly enforce speed limits in its operations. It appears that to that end a supervisor equipped with a radar gun was monitoring train movements on a random basis. Additionally, as

noted above, the record reveals that the grievor's overspeed at the location of the derailment was not in the nature of an isolated event. The documentary evidence obtained from the event recorder confirms that a substantial number of slow orders were routinely disregarded by the grievor on some eight occasions over the course of both trips, in addition to the apparent disregard of the maximum permissible speeds for the transit of dangerous goods through towns and villages. Setting aside the issue of the dangerous goods which the Union submits was a rule generally disregarded and not strictly enforced by the Company, the grievor was nevertheless involved in a consistent pattern of disregard of slow speed orders both on the northbound and southbound legs of his trips on June 18 and 19, 1998, until his train finally derailed.

This Office appreciates the importance of the observation of cardinal rules in relation to the safe operation of trains, and has had occasion to consider the appropriate measure of discipline in such circumstances elsewhere within the industry (see **CROA 2161**). In the instant case I am satisfied that the Company placed employees on notice that speeding infractions were a matter to be taken seriously, that the grievor was in blatant disregard of that concern and that a substantial degree of discipline, well in excess of a warning for a first offence, was amply justified in the circumstances of this case. I am inclined to agree with the suggestion of the Company that but for the grievor's prior record and length of service a more severe measure of discipline might have been justified. Nor do I find in the material before me any violation of the grievor's procedural rights under the investigatory provisions of the collective agreement. It is clear that the decision to assess the ninety day suspension against Mr. Farrell was not taken until all of the evidence was fully obtained and reviewed in a manner consistent with the requirements of the collective agreement.

In the result, the grievance must be dismissed.

September 21, 1999

MICHEL G. PICHER
ARBITRATOR