

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3247

Heard in Montreal, Wednesday, 13 March, 2002

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

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

DISPUTE:

The 30 demerits issued RTC S. Gravel for failing to properly protect the movement of 5948 through the issuance of a CROR Rule 568 clearance, failing to ensure there were no conflicting movements and failing to notify the appropriate personnel of an unidentified track occupancy (UTO) appearing on the RTC display panel, resulting in the unauthorized movement of CP 5948 on to the South main track between stations Moonlight and Elm Street on the Carter Subdivision, a violation of CROR Rules 566 and 568, CROR General Rule A, Items (iii), (vi), (viii), RTC Supplemental Manual Policy for operating trains over unidentified track occupancy (UTO), while working the Cartier/Parry Sound Subdivisions May 11, 1999.

JOINT STATEMENT OF ISSUE:

On May 11, 1999 between 1310 and 1344 RTC Gravel was providing lunch relief for the Cartier/Parry Sound RTC desk. During this time 5948 proceeded from the North track to the South track at Sudbury without obtaining correct authority, as the crew allegedly took their discussions with RTC Gravel as authorization to switch to the South track.

On May 14, 1999 an investigation was conducted into this incident and on May 21, 1999 RTC Gravel's record was debited with 30 demerits.

The Union has advanced a grievance requesting that the Company return RTC Gravel to service with full compensation and benefits for time lost and without loss of seniority, partly due to the Union's view that RTC Gravel did not receive a fair and impartial hearing.

The Company views the discipline assessed the grievor was appropriate given all the circumstances and in the Company's view the investigation conducted was fair and impartial. The Company declined the grievance.

FOR THE BROTHERHOOD:

**(SGD.) R. RUDDICK
GENERAL CHAIRMAN**

FOR THE COMPANY:

**(SGD.) L. WORMSBECKER
FOR: DIRECTOR NMC OPERATIONS**

There appeared on behalf of the Company:

J. Worrall

– Labour Relations Officer, Calgary

S. Seeney – Manager, Labour Relations, Calgary

And on behalf of the Brotherhood:

J. Ruddick – General Chairman, Burlington

AWARD OF THE ARBITRATOR

The record before the Arbitrator discloses that the grievor, while handling the Cartier/Perry Sound RTC desk on a lunch relief basis on May 11, 1999, improperly allowed train 5948 to move from the north main track across onto the south main track at Sudbury, for the purpose of proceeding into the Sudbury Yard. It is common ground that that movement caused the train to move across the path of another train, CP 5810 West.

There are a number of disturbing aspects to the facts revealed in the record before the Arbitrator. Firstly, a review of the radio communication between the crew of train 5948 and the grievor would indicate that the crew requested clearance to move from the north track to the south track in contemplation of heading into the Sudbury Yard. At one point the grievor is heard to say to the crew: "I was asking you how you were getting from the north track down into the yard?" A brief exchange then ensued with respect to two possible routes to follow, with it apparently being resolved that the use of a manual crossover switch at Moonlight would be the best way to go. At that point the crew states: "Can we use the manual at the east end of Sudbury ah RTC?", whereupon the grievor responds: "Ah, okay Work 5948 West RTC to use manual at the east end of Sudbury." The members of the crew then repeat what Ms. Gravel had just stated, following which she said: "Thank you very much gentlemen."

On its face the foregoing exchange would clearly indicate that the grievor would be taken, by any reasonable observer, to have given the crew authority to cross onto the south track, which they then proceeded to do. The evidence further indicates that Ms. Gravel could see by way of a light on the panel in front of her that a train did then come to occupy the south track. During the course of the disciplinary investigation she stated that she did not give a clearance to the work train, but merely believed that the statement which they made over the radio was so much conversation among themselves. She also added that she did not ascribe great importance to the fact that the light appeared on the panel before her as, according to her experience, the panel lights sometimes malfunctioned.

There are a number of aspects of the grievor's evidence which are troubling, and which go to the credibility of her explanations. Firstly, it appears that after her communication with the work train she proceeded to line the north track signals, an action which would be entirely inconsistent with Ms. Gravel remaining of the opinion that the train continued to occupy the north track. The evidence further indicates that when the track light on the north track representing CP 5948 disappeared from the panel, she did not contact the train to verify its location. In addition, it is not disputed that when she saw the track occupancy light displayed in relation to the south track, and formed the belief that there might simply be something wrong with a signal or the track, causing the light to display she did nothing, contrary to her obligation to report what she believed was an irregularity.

In the result, by her own inattention and, and arguably her recklessness, the grievor allowed a situation of serious peril to develop, permitting work train 5948 onto the south main track without protection, and in circumstances which would leave little warning to the crew of the approaching train CP 5810 West. It does appear that the unlocking of the crossover switches by the crew of work train 5948 automatically caused a stop signal to be displayed in the path of the oncoming second train. It is not clear, however, whether a surprise signal of that kind would have sufficed to allow that train to stop in time to avoid a serious collision.

Fortunately, the situation was defused when Rail Traffic Controller C.F. Desbiens, who was being relieved by the grievor, returned from his lunch break. It appears that the grievor then advised Mr. Desbiens that the work train was occupying the south main track. Being aware that the train would require a Rule 568 clearance for that move, RTC Desbiens asked the grievor what authority the train had to occupy the south track to which she responded "I think he crossed over on his own." Seeing the track occupancy light on the south track, and being mindful of the approach of train 5810 West Mr. Desbiens immediately radioed the work train, and fortunately was able to confirm that it had proceeded clear of the south track and into the Sudbury Yard at that point.

The evidence reviewed above leaves the Arbitrator with the clear impression of a situation of great peril created by the negligence of Ms. Gravel. In the Arbitrator's view the case for the grievor is negatively compounded by the apparent inconsistencies in the evidence, notably that she claimed to believe that the work train remained on the north track, but apparently informed RTC Desbiens that it was on the south track when he returned from his lunch break. When regard is had to her further explanation that she could not recall having lined the signals on the north track, legitimate concern arises with respect to whether there was an attempt by the grievor to obscure the facts of what occurred.

At the time of the incident which is the subject of this grievance the grievor had forty demerits on her record. Thirty of those concerned a serious rules infraction which occurred approximately one year earlier (see **CROA 3246**). She was, at the time, an employee of relatively short service, having been hired in January of 1997 and first qualifying as a rail traffic controller in February of 1998. In these circumstances the Arbitrator can see little basis for mitigating the penalty assessed. Nor do I see in the record any compelling evidence to support the suggestion of the Brotherhood that the grievor was denied a fair and impartial investigation.

For all of the foregoing reasons the grievance must be dismissed.

March 15, 2002

(signed) MICHEL G. PICHER
ARBITRATOR