

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3253

**Heard in Calgary, Tuesday, 14 May 2002
concerning**

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)**

EX PARTE

DISPUTE - BROTHERHOOD:

Appeal of the assessment of a forty-five (45) day suspension to the personal record of Locomotive Engineer G.S. Edwards of Jasper, Alberta for "Violation of CROR Rules 105 and 106 resulting in head on collision between Train A42851-30 and 0830 Extra Yard assignment at west end of south lead Jasper Yard while working as Locomotive Engineer on train A-42851-30 on January 31, 1999."

DISPUTE - COMPANY:

Appeal of the assessment of a forty-five (45) day suspension to the personal record of Locomotive Engineer G.S. Edwards of Jasper, Alberta for violation of CROR 105 and 106 resulting in head on collision between Train A42851-30 and 0830 Extra Yard assignment at west end of south lead Jasper Yard while working as locomotive engineer on train A42851-30 on January 31, 1999."

COUNCIL'S STATEMENT OF ISSUE:

On January 31, 1999, Locomotive Engineer Edwards was ordered for 04:00 at McBride, B.C. to handle train A42851 30 from that location to Jasper, AB. The train consist comprised of 81 loads and 4 empties, with a total weight of 9,445 tons and measuring 5936 feet in length. The train was powered with three (3) locomotives, 5410 (operational), 5432 (dynamic brakes not operational), and 2452 (isolated).

At Yellowhead, a point eighteen miles west of Jasper, and at the beginning of a downhill descent into Jasper, Locomotive Engineer Edwards throttled his

locomotive consist down. At about Mile Post 13.9, the grievor noticed blowing snow around and about the train and decided that he would utilize the train braking system to warm the brake shoes, which was done in conjunction with slowing down for the hot box and dragging equipment detector located at Mile Post 12.2. At approximately one mile west of Geikie, Mr. Edwards went into dynamic braking mode in order to commence decelerating for an upcoming speed zone change, and thereby complying with Company fuel conservation and train handling policies.

At just inside the mile post two (2) the grievor initiated a service reduction to complement the dynamic braking system in progress, in preparation with slowing his train down for the purposes of yarding at Jasper Yard. A further brake pipe application was made at approximately mile post one (1) as the train was not reacting and slowing as anticipated. Mr. Edwards became very concerned that the train was still not slowing down as planned, notwithstanding another brake application had been made, and therefore the grievor made an immediate decision to place the train into emergency.

Unknown to Locomotive Engineer Edwards at the time the train was placed into emergency, the 0830 Extra Yard Assignment was stopped in the vicinity of the road crossing at grade, within CROR Rule 105 territory and as the movement was by now on a collision course with the yard's locomotive consist Mr. Edwards attempted to warn the crew of the impending danger. An ensuing collision occurred and the grievor was thereafter held out of service pending an investigation.

An investigation was held by the Company and the grievor was subsequently assessed a forty-five (45) day suspension effective and coinciding with the incident.

The Brotherhood contends that the discipline assessed to the personal record of Locomotive Engineer Edwards was excessive under the circumstances and which must be altered by way of a substitution of demerits effective with the date of the incident, reflecting and taking into consideration all mitigating factors and, further, that the grievor be compensated for all wages and benefits lost for the period while under suspension.

In the alternative, the Brotherhood submits that the suspension must be reduced to a more appropriate level and that the grievor be compensated for all wages and benefits lost for the period that is abridged.

The Company has declined the Brotherhood's appeal.

COMPANY'S STATEMENT OF ISSUE:

on January 31, 1999 L/E Edwards was ordered for 03:00 at McBride, BC to handle train 428 from McBride to Jasper, AB. The train consist comprised of 81 loads and 4 empties, with a total weight of 9445 tons and measuring 5936 feet in length. The train was powered with three locomotives, 5410, 5432 (dynamic brakes not operational), and 2452 (isolated).

At Mile 1.7 of the Albreda Subdivision, L/E Edwards initiated a brake pipe reduction in conjunction with the dynamic braking in progress, in preparation for slowing his train to enter CROR Rule 105 territory commencing at Mile 4. at Jasper.

L/E Edwards movement was not slowing sufficiently to comply with the requirements of Rule 105 and after placing the movement into emergency at approximately Mile 5., L/E Edwards and his conductor jumped from the movement, as an 0830 Extra Yard Assignment was stopped in the vicinity of the road crossing at approximately Mile .3, within CRO Rule 105 territory, where a subsequent collision occurred.

An investigation was conducted and L/E Edwards was assessed a forty-five (45) day suspension effective and coinciding with the date of the incident.

The Brotherhood contends that the discipline assessed to the personal record of L/E Edwards was excessive under the circumstances, and which must be altered by way of a substitution of demerits effective with the date of the incident, reflecting and taking into consideration all mitigating factors, and further, that the grievor be compensated for all wages and benefits lost for the period while under suspension. In the alternative, the Brotherhood submits that the suspension must be reduced to a more appropriate level, and that the grievor be compensated for all wages and benefits lost for the period that is abridged.

The Company has declined the Brotherhood's appeal.

FOR THE COUNCIL: FOR THE COMPANY:

(SGD.) Q. E. BRUMMUND (SGD.) S. BLACKMORE

FOR: GENERAL CHAIRMAN FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

S. Blackmore - Manager, Human Resources, Edmonton
J. Torchia - Director, Labour Relations, Edmonton
B. Kalin - Superintendent Transportation, Edmonton
J. Reynolds - Engine Service Officer, Edmonton
R. Reny - Manager, Human Resources, Vancouver

And on behalf of the Council:

D. E. Brummund - Senior Vice-General Chairman, Edmonton

R. J. Ermet - Local Chairman, Jasper

R. Allen - Local Chairman, Biggar

AWARD OF THE ARBITRATOR

Having reviewed the material the Arbitrator is satisfied that Locomotive Engineer Edwards was deserving of a serious degree of discipline for the incident leading to a head on collision in Jasper on January 31, 1999. There are, however, mitigating circumstances to be considered. It is common ground that when the grievor took over his train he was not advised that the dynamic brakes were operating on only one of the three locomotive units in his consist. He was under the mistaken, and in the Arbitrator's view reasonable, impression that he had the benefit of dynamic braking from at least two of the three locomotives. In fact a company officer had directed the disabling of the dynamic brake feature of one of the locomotives, without any documentation or notice which would reasonably have conveyed the situation to Locomotive Engineer Edwards.

The importance of the dynamic brakes is heightened by the fact that at the time of the incident in question the Company was in the early months, and the first winter months, of the implementation of a new fuel efficiency policy by which locomotive engineers were directed to utilize the dynamic braking system as a first measure of train handling. In the result, as Mr. Edwards approached Jasper, he expected that he would have sufficient dynamic braking power to bring his movement within the necessary speed limits. Unfortunately, it was too late when he realized that his train was not slowing as he thought it should, and an application of the train's air braking system, including an emergency application, were insufficient to bring the train to a stop in time. Fortunately the grievor and his conductor were able to jump from their locomotive, which collided with a road service locomotive operating in yard service, at a speed of twenty-five miles per hour. The locomotive engineer on the locomotive in yard service was not injured.

In the Arbitrator's view while the instant case does involve the mitigating factors discussed above, these factors do not completely exonerate the grievor. It would appear that Mr. Edwards did wait too long to initiate the braking operation of his train, resulting in his inability to compensate in time for the limited dynamic braking capacity which he had. Closer attention to the handling of his train might well have avoided what occurred. In the Arbitrator's view this is an appropriate case for concluding that the responsibility for the collision and derailment which resulted can be characterized as equally shared. In those circumstances, and having regard to the fact that the grievor was previously disciplined only once in all of his employment since May of 1974, it is appropriate to direct a reduction of

penalty to a twenty day suspension, and it is so ordered.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be compensated for the difference in wages and benefits lost, subject to the substitution of a twenty day suspension for the incident at Jasper on January 31, 1999.

May 21, 2002 (signed) MICHEL G. PICHER
ARBITRATOR