

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 61

Heard at Montreal, Tuesday, March 14th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Request for removal of 35 demerit marks debited against the record of Conductor E.G. Perrault for failing to take proper action to stop movement when engineman failed to properly control movement of engine consisting of Units 8715 and B.M. 1577, resulting in damage to equipment, Mile 23.2, Keewatin Subdivision, Extra 8715 West, July 12th, 1966 and claim for 1937 miles for time lost while held off for investigation and decision in connection with this incident.

JOINT STATEMENT OF ISSUE

The Brotherhood contends that Conductor Perrault's responsibility was not established by the evidence produced at the investigation as specified in article 32, clause (d). The Company contends that Conductor Perrault's responsibility was established by the evidence produced at the investigation and declines to remove the discipline and because he was not found blameless the Company declines to pay for time lost by Conductor Perrault.

FOR THE EMPLOYEES:

(SGD.) S. MCDONALD
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. C. STEELE
GENERAL MANAGER

There appeared on behalf of the Company:

P. A. Maltby – Supervisor Personnel & Labour Relations, Winnipeg

And on behalf of the Brotherhood:

S. McDonald – General Chairman, Calgary

AWARD OF THE ARBITRATOR

The facts established that due to the westward main track at mileage 23.2 Keewatin Subdivision being washed out, a train of gravel was dispatched from Winnipeg to repair the track. That crew had not completed the job after many hours on duty. It was then decided to leave the gravel cars on the westward main track at Mileage 23.2 and send the original crew into their terminal at Kenora.

Following this Conductor E.G. Perrault and crew, Engineman P.M. Switzer and Fireman W.P. Brunn were ordered at Kenora and left with a train for Winnipeg as Extra 8715 West at 17.05K, with instructions to leave their train at Lowther, Mileage 20.0 and proceed with their two diesel units to Mileage 23.2 to complete unloading the cars of gravel left on the westward main track.

This crew was notified that the westward track was out of service at Mileage 23.2 on the Keewatin Subdivision. This further order was issued to Conductor Perrault and the Engineman:

Arrange to cut your engine off at Lowther, leave train on main line, run to mileage 23.2 on the westward track and assist unload 3 cars gravel under instructions of S. Brownstone and return to Lowther under flag to lift train.

As the train approached Lowther it was stopped by Mr. C.A. Garla, Acting Assistant Superintendent, who boarded the locomotive. After that the two diesel units were cut off and proceeded towards mileage 23.2. According to statements taken during the investigation from those riding on the head-end diesel, the engine continued westward until it detrained the flagman at about mileage 21.2. It was then required to move about two miles to the point of the known obstruction at Mileage 23.2.

At this point Engineman Switzer was seated at controls and Fireman Brunn was standing behind him, at the right of the cab. Acting Assistant Superintendent Garland was seated on the Fireman's seat at left rear of cab and Conductor Perrault was seated ahead of him on the Trainman's side.

It was stated the throttle had been set in Position 4 by the engineman and was not reduced until the engine passed the Yellow Flags located about mileage 21.6. These were located to the outside of both eastward and westward tracks and were observed by the crew members as they were passed. The flags represented an advance warning of the ten miles per hour speed restriction at Mileage 23.2, that had been outlined in Train Order No. 748. They also indicated the engine was then not less than 6,000 feet from Mileage 23.2.

It was established that as the engine passed the yellow flag the speedometer indicated the speed to be between 18 and 20 miles per hour. Engineman Switzer then reduced the throttle from Position 4 to Position 2 and allowed the movement to continue without any brake application. Passing Milepost 22 the speed was not over 20 miles per hour but the throttle was reduced from Position 2 to IDLE Position. It was stated no subsequent effort was made to reduce the speed until the engine was closely approaching 22.9, when Engineman Switzer claimed to have made an application of the independent brake valve and obtained a brake cylinder pressure of 15 to 20 pounds per square inch. It was said that when fully applied the independent brake valve on units of this type normally provide brake cylinder pressure of 40 pounds per square inch. Within a matter of seconds after this application the engineman stated he saw cars about 7 or 8 poles west, which would represent from 21 to 24 car lengths. He then immediately made a full application of the independent brake. He said he felt no brake action whatever, so immediately placed the automatic brake valve in emergency position but again without any resulting braking action. As speed was not being reduced, collision with the standing cars was clearly unavoidable so Engineman Switzer said he then braced himself against possible injury.

Fireman Brunn verified the Engineman's account of what had transpired and said that he called out as soon as he saw the cars, which was at the same time as the Engineman.

Conductor Perrault said that while proceeding westward from Lowther the speed was under 20 miles per hour at all times. He noted that the engine appeared to be idling and the movement under control. When he heard the Fireman call attention to the cars, he looked across the cab and saw that the Engineman had his hand on the independent brake valve with the handle moved forward from running position which indicated a brake application.

Conductor Perrault then looked ahead as they entered straight track around the curve and saw the cars at an estimated distance of 5 or 6 pole lengths. Realizing that the units had not slowed down he called to the Engineman to apply brakes in emergency position. The Engineman replied "She's got everything" meaning he had already gone

to an emergency position As the speed had not been reduced, there was nothing left for Perrault to do, it was claimed by the representative of the Brotherhood, but to brace himself against possible injury on impact with the cars.

After the collision and before Conductor Perrault left the cab, Mr Garland, the Assistant Superintendent said to him that he could not understand why they had not stopped as the movement was under control approaching that point.

Considerable evidence was introduced in the Company's brief tending to show that subsequent tests of the braking system, as well as a subsequent admission made by the Engineman, tended to establish that his version had not been correct.

Assuming this to be so, the liability of the Conductor was based by the Company on his failure in addition to calling out to the engineman for an emergency application, to actually apply an emergency application himself by means of an emergency valve located in the control compartment, said to be within easy access of any crew member. General Rule 14 was relied upon for this responsibility:

Conductors and Trainmen must familiarize themselves with the location of the emergency valve on each car so equipped. All employees concerned must familiarize themselves with the location of emergency valves on motive power units. Emergency valves are to be used only in cases of emergency and when used must be opened wide and left open until the train is stopped.

It was said that this train ran under the authority of the conductor and it was his responsibility either to apply this emergency valve himself or to issue instructions to other members in the cab to do so.

Rule 106 provides:

Trains will run under the direction of their conductors ...

Conductors, enginemen, and pilots if any, are responsible for the safety of their trains and the observance of the rules and under conditions not provided for by the rules must take every precaution for protection. This does not relieve other employees of their responsibility under the rules.

The representative for the Brotherhood claimed that this was not in fact a train, but rather an engine and referred the Arbitrator to the definition of "Engineman" appearing in the Uniform Code of Operating Rules, reading:

ENGINEMEN – The employee in charge of and responsible for the operation of an engine.

It was disclosed that Acting Superintendent Garland was closer to the emergency valve located by the fireman's seat than the Conductor. He did not initiate an emergency brake application by use of this emergency valve. An explanation was offered for this failure that because of this newly appointed official's unfamiliarity with the terrain, he may have been prompted to place too much reliance on the judgement of the crew members. This official was also disciplined, by being reduced from his position as Acting Assistant Superintendent to his former classification of Trainman and Conductor.

Before dealing with the justification for the disciplinary action taken against Conductor Perrault of 35 demerit marks "for failing to take proper action to stop movement when engineman failed to properly control movement of engine" the representative for the Brotherhood pointed to the fact that although the grievor had not been present during the taking of statements other than his own, the Local Chairman had requested copies of all statements. Those made by the Engineman and Fireman were supplied but the Superintendent in a letter dated October 12, 1966, stated:

It will not be possible to introduce the evidence submitted by Acting Assistant Superintendent Garland in this case.

When further protest was made a letter was received stating that the information obtained from Superintendent Garland had no bearing on establishing Conductor Perrault's responsibility.

I may say briefly that in my opinion this ruling was contrary to the intent of article 32 (c). The words "... whose evidence may have a bearing upon the employee's responsibility ... and to receive a copy of the statement of such witness" also include any statement that may clear him of responsibility, if such is requested. However, the determining point in this matter is obviously reduced to the alleged failure of the Conductor to activate the safety

valve, either by himself or by instructions to others in the cab. The Company decided on all the evidence produced by its investigation that the explanation offered by the Engineman was not acceptable.

In my opinion a proper assessment was not made of the Conductor's responsibility in the light of what was occurring in the cab just prior to the collision. It is to be remembered there are seconds involved. Having called for an emergency operation by the engineman, can it be clearly concluded that he had no right to rely upon that official reacting in response.

There was no evidence to refute that given by the Conductor in his statement to this effect:

While units were moving around the right hand curve at Mile 23 I heard the fireman remark 'There are the cars'. Hearing this I looked across the cab and noted Engineman Switzer had his left hand placed on the independent brake valve handle and I did observe that it was some distance forward from the running position. I am not able to state how far forward from the running position.

Obviously this reassured the Conductor that the operation was under control of the Engineman. He continued:

I then directed my vision ahead on the left side of the cab and just before the leading unit entered the straight track I noted cars standing ahead of us, and I would estimate the distance from leading unit to the cars at this time was five to six pole lengths. Our speed at this time did not appear to be reducing. I would estimate we were still proceeding at between 18 and 20 miles per hour. When I realized that our speed was not reducing I became concerned and I hollered to the engineman to apply brakes in emergency. He replied "She's got everything" and I took this to mean that emergency brake had already been applied. At this time I did not feel any braking action whatever on the unit, and I then realized a collision was imminent and I braced myself in my seat.

This portion of Fireman W. P. Brunn's official statement is of interest:

Q. It is considered that if action had been taken to apply independent brake sooner that the mishap could have been prevented. It is also considered that you being located directly behind the engineman you should have been aware of this and advised the engineman to take required action. Do you agree?

A. No, I do not agree, because I had noted the engineman had placed the independent brake in full application position when cars were first sighted. I also noted that immediately after this he placed the automatic brake in the emergency position and I therefore considered sufficient action was taken.

Accepting the statement made by Conductor Perrault that when he called for an emergency application the Engineman replied "She's got everything" he was justified in believing that an application by him of the safety valve would have had no effect. In that situation I cannot find the culpability present on Conductor Perrault's part that would justify disciplinary action. He was alert. He called out for action by the engineman. To require more, particularly in view of the answer he received, would in my opinion be quite unreasonable.

For these reasons I find the demerit marks imposed should be expunged from Conductor Perrault's work record.

(signed) J. A. HANRAHAN
ARBITRATOR