CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 62

Heard at Montreal, Tuesday, March 14th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Request for removal of twenty (20) demerit marks assessed against the record of Engineer E.G. Nicholson for "Failing to stop after traversing the approximate distance advised to move by radio resulting in collision, Moose Jaw, April 26, 1966."

JOINT STATEMENT OF ISSUE:

Engineer Nicholson was involved in a collision between his road engine (DE units 4032, 8794, 4463, CGW 156 and 8729) and yard engine 6534 while his movement was being controlled by radio signal in Moose Jaw Yard at 21.40 on April 26, 1966. Engineer Nicholson made his statement at investigation on April 28th, and gave a further and supplementary statement on May 2nd.

The Brotherhood of Locomotive Engineers appealed the discipline assessed. The Company has declined to remove the discipline.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) A. C. DOULL	(SGD.) R. C. STEELE
GENERAL CHAIRMAN	GENERAL MANAGER

There appeared on behalf of the Company:
P. A. Maltby – Supervisor Personnel & Labour Relations, Winnipeg

And on behalf of the Brotherhood:
A. C. Doull – General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

This engine, with the grievor in control as engineer, was operating from Moose Jaw, Saskatchewan. It left the shop track at 9.20 p.m. on the night in question. As part of the crew rear trainman Lougheed and head trainman Chomin were located on the west platform of D.E. unit 8729, from where they could observe the track ahead of their movement. Trainman Chomin was equipped with a two-way radio set and was controlling movement by use of radio signals to Engineman Nicholson.

Enroute westward from the Shop Track to the train, the engine was required to move via westward traffic track to a crossover connecting this track with the eastward traffic track, then move through this crossover and along the eastward traffic to its connection with "D" Yard Lead and via the latter to the train, located in Yard Track D-13.

The facts established that while the engine progressed westward the movement was stopped on a radio signal by Trainman Chomin, while a yard engine moved west and clear of the crossover. The movement then restarted by radio signal and subsequently stopped when the engine reached a point just clear of the crossover. There was no question as to the engineman's reactions to these radio signals. Proper control was maintained.

Movement was then stopped east and clear of the crossover Trainman Lougheed walked westward to west switch of crossover, located on eastward traffic track. After setting this switch for the intended movement and observing that Trainman Chomin had also set the east switch beyond the crossover that is located on the westward traffic track, for the intended movement, Lougheed gave a backup hand signal to Chomin with an electric hand

lantern. On receipt of this hand signal, Trainman Chomin told Engineman Nicholson by radio that it was all right to back up and there was "a good ten car lengths in which to make this movement" The statement made by Chomin in the official investigation established that at this time he had a clear view of approximately 700 feet to the west of his position on the ground.

In his official statement Engineman Nicholson confirmed that he received Chomin's radio instruction to back up, along with the proviso that there was a good ten car lengths in which to do so. He accepted this radio instruction and started the back-up movement.

It was told that as Trainman Lougheed continued walking westward in advance of the back-up movement, he observed a conflicting movement of a Yard engine along "D" Yard Lead towards the eastward traffic track. Although Lougheed claimed in his statement that he gave stop signals to the crew of the Yard Engine and to his own engine, such hand signals were not observed. Engineman Nicholson was making his movement on the basis of the last radio signal received from Trainman Chomin and was not watching for hand signals given by members of his train crew.

Trainman Chomin's view of the movement of the Yard Engine along 'D' Yard Lead was obscured when his engine started to move through the crossover and his view of Trainman Lougheed was similarly obscured during such movement. Control of movement, between the two trainmen, was on the basis of hand signals and when Trainman Lougheed's signals disappeared from the view of Trainman Chomin, the latter should have stopped, the movement, according to the Company representative, and not permitted it to continue until he had again established visual contact with Trainman Lougheed. This is in accordance with the requirements of the third paragraph of Rule 12 of the Uniform Code of Operating Rules reading:

> When cars being pushed by an engine under control of hand signals, the disappearance from view of the member of the crew or lights by which signals controlling the movement are being given must be regarded as a stop signal.

This signal was not given. Both engines continued towards each other at slow speed and a collision occurred on the eastward traffic track at a point said to be 431 feet west of the crossover switch located on the eastward track. For the Company it was claimed the engine controlled by Engineman Nicholson had traversed a distance of 613 feet, from the point at which he received the radio signal to back through the crossover to the point of the subsequent collision with the yard engine.

This operation controlled by the use of railway radio communicating system was pursuant to the instruction contained in paragraph 28 of Section 'B' of Company Form C.S. 44, reading:

> When more convenient to do so, radio may be used in lieu of hand signals. During switching operations, when radio is being used, both direction and distance of movement must be given. The engineman will move the approximate distance and then stop, unless he receives further instructions.
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> Example: "Engine 8921 back up two car lengths' rather than 'Back up'"

For the Brotherhood it was claimed that the replacement on occasion of the hand signal to that of radio signal left something to be desired. In other words, with a hand signal, indicated by the swinging of the hand or lamp the number of times a car length movement is required, should something intervene endangering the movement, an immediate signal to stop is available. When the signal is by means of the radio, the estimate of the distance the movement backwards or forwards required is dependent upon a proper evaluation of the distance by the employee giving the signal. It was stressed that the Uniform Code of Operating Rules requiring the use of the term "car length" does not spell out in terms of yards or feet what is meant by that designation Modern equipment has changed the length of cars. It was contended that a track designated as a 50-car track may only hold 40 modern cars.

From the statement made at the official investigation by Engineer Nicholson, the representative for the Brotherhood concluded that his estimate of a car length ran closer to 55 feet than a lesser distance. The rather vague instruction "a good ten car lengths …" indicated something more than the total indicated, all pointing to the area of indecisive instruction, it was contended.

For the Company it was conceded that as the length of cars varies to some degree it would be impossible to place an absolutely precise measurement on distance involved in a car length. However, a rule-of-thumb measurement said to have been generally recognized by train and engine crews for many years is that a car length

will approximate 45 to 50 feet; that the latter figure is more generally accepted in recent years, because of modern construction of longer cars.

It was emphasised by the Company's representative, however, that in his official statement this Engineman did not rely upon any rule-of-thumb measurement. In his statement he claimed to have made an actual car count from cars standing in an adjacent track to the north of his movement. This portion of his statement described this counting:

> At this point, I stopped clear of the crossover switch and waited until I received another signal to back up, which also included the information that I had at least ten car lengths in which to move. This was given to me by radio from Trainman Chomin. I backed up counting car lengths by a string of cars, standing in a track to the north of me … I moved eight car lengths westward and then set up the brake as I was clear of the crossover. At about that time I felt a jolt and later learned that contact had been made with Yard Engine 6534.
>
> Q. Did you move eight car lengths by actual car count?
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> A. Yes, counting from a point when my trailing unit would be near the west crossover switch.

The Company's representative analysed this statement by pointing out the crossover is 182.2 feet in length. When the car count was started by Engineman Nicholson at the point indicated in his statement, the engine had already traversed most of the 182 feet involved, or a minimum distance of three car lengths. Thus, it was reasoned, by his own count of cars, the grievor submitted his engine to traverse eleven car lengths before even setting the brake to enable stopping the movement. This indicated there had been no attempt by Engineman Nicholson to stop the movement within the approximate distance specified by radio signal. Had it not been stopped by the collision, the movement would have proceeded a greater distance.

In summary the representative for the Company emphasised when operating by radio signals, an experienced engineer such as the grievor, with over twenty years' service in that classification, must of necessity keep himself well within the maximum expressed by the trainman. In this instance, it was claimed he had made no endeavour to stop the movement until he reached a point clearly in excess of the distance specified by radio instruction.

Consideration of the facts disclosed convinces no adequate explanation has been made by the grievor for his failure to carry out in a reasonable manner the instructions he received. His own statement as to the point where he set the brakes, in relation to the point from which he started over the crossover, indicates a failure to take into account this latter distance, and this, in my opinion, establishes a lack of care in controlling the movement of this engine as required by the instruction he had received from the trainman.

For these reasons this grievance is dismissed.

(signed) J. A. HANRAHAN
ARBITRATOR