

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 127

Heard at Montreal, Wednesday, October 9th, 1968

Concerning

ALGOMA CENTRAL RAILWAY

and

BROTHERHOOD OF RAILROAD TRAINMEN

EX PARTE

DISPUTE:

Conductor H. Graham, working as a Yard Conductor in Steelton Yard, April 3, 1968, was assessed 10 demerit marks for the speed that the yard engine travelled from Mile 4 to Mile 2.

EMPLOYEES' STATEMENT OF ISSUE:

The Yard Crew returned from switching at Mile 4 with several cars behind the engine and stopped on the scales in Steelton Yard, several poles south of Mileage 2.

This crew does this switching regularly and on this date did all work listed to them and finished their day in the 8 hour shift.

Several officials followed this Yard Crew down the hill and stated that this crew did not come down fast enough. The Conductor and Engineer both replied in letter to Manager of Rail Operations, that they believed they had done their work in the normal manner.

Conductor H Graham and Engineer A. Booth received a letter dated April 11, 1968, assessing their records 10 demerit marks for restricting and or limiting production and service contrary to the provisions of paragraph 4 of the General Notice of the Uniform Code of Operating Rules.

The Brotherhood of Railroad Trainmen's Committee protested this discipline on the Basis that issue of discipline without an investigation is contrary to Article 55 of our agreement.

FOR THE EMPLOYEES:

(Sgd.) C. E. McCLELLAND
GENERAL CHAIRMAN

There appeared on behalf of the Company:

H. R. Wootton – Manager Rail Operations, Sault Ste. Marie

And on behalf of the Brotherhood:

C. E. McClelland – General Chairman, Sault Ste. Marie

AWARD OF THE ARBITRATOR

The yard crew was observed in the performance of its work on April 3, 1968, by a party including the Chairman of the Board and senior officers of the company. It would appear that the yard engine and the five cars it was pulling moved from Mile 4 to Steelton (Mile 2) at an average speed of approximately 5.5 miles per hour, as alleged. This speed was indicated by the speedometer on the inspection car; more conclusively, the movement was timed by the company's officers at 22 minutes for two miles.

Conductor Graham was requested to explain the slow movement, and replied, in writing, that the time was fifteen minutes, or ten miles per hour. The engineer, who was also asked for an explanation, did not state what the elapsed time or the speed had been, but did say that ten miles per hour was the fastest safe speed. Yard crews must travel at restricted speed, and the company does not challenge the engineer's statement that ten miles per hour is the fastest safe speed. It is the company's contention that the train was moved at a speed much slower than that.

The grievance now before me is that of the Conductor, Yard Foreman Graham (represented by the Brotherhood of Railroad Trainmen). He would be responsible (as well as the engineer) for the movement of the train, under Rule 106 of the Uniform Code of Operating Rules. If the fact is that the train was moved at an unreasonably slow speed the discipline would properly be assessed against the Conductor as well as the Engineman.

The union relies, however, on article 55 of the collective agreement, which provides as follows:

Article 55 – Discipline

No employee will be disciplined or dismissed until the charges against him have been investigated; the investigation to be presided over by the man's superior officers. He may, however, be held off for investigation not exceeding three (3) days, and will be properly notified of the charges against him. He may select a fellow employee to appear with him at the investigation and he and such fellow employee will have the right to hear all of the evidence submitted and will be given opportunity through the presiding officer to ask questions of witnesses whose evidence may have a bearing on his responsibility, questions and answers will be recorded. He will be furnished with a copy of his statement taken at the investigation. Decision will be rendered within twenty (20) days from the date investigation is held and if not satisfied with the decision he will have the right to appeal within thirty (30) days from date he is notified thereof. On request, the General Chairman will be shown all evidence in the case. In case discipline or dismissal is found to be unjust, he will be exonerated, reinstated if dismissed, and paid a minimum day for each twenty-four (24) hours for time held out of service at schedule rates for the class of service in which he was last employed. When employees are to be disciplined, the discipline will be put into effect within thirty (30) days from the date investigation is held.

It is understood that the investigation will be held as quickly as possible and that layover time will be used as far as practicable.

Employees will not be held out of service pending rendering of decision except in cases of dismissable offences.

It is quite clear that this article contemplates a formal hearing with full opportunity to hear the evidence and provide an explanation of the matter complained of. The "investigation" in this case consisted of a request for a written explanation. The employees concerned did provide such explanation. If an employee admits the offence for which he is disciplined, it may be – in some cases at least – that he would thereby be taken to have waived his right to a formal investigation and hearing. In the instant case, however, Conductor Graham did not admit that the train had moved too slowly. Indeed, his statement is that the elapsed time was only fifteen minutes.

The material before me consists, in effect, of nothing more than a charge and a denial. The company disciplined the grievor because it naturally believed the statements of its officers; but by the same token it disbelieved the statement of its employee. There was no hearing at which any evidence was presented, and there was no opportunity for the grievor to question or test the statements which were acted on. Because of this, it is impossible for me to determine whether the alleged observations of the company's officers are to be preferred to those of the grievor. It should be clear that I do not in any way question the statements of the company's officers: it is simply the case that there is nothing in the way of admissible evidence before me which would permit me to decide the question of fact

one way or the other. I cannot make any assumptions of credibility as between the parties, whatever the rank, high or low, of the persons involved.

Since there was no investigation as contemplated by article 55 of the collective agreement, and since the grievor's position was clearly prejudiced by that omission, the only conclusion possible is that discipline was not imposed in accordance with the provisions of the collective agreement.

Accordingly, the grievance must be allowed, and the 10 demerit marks removed from the grievor's record.

(signed) J. F. W. WEATHERILL
ARBITRATOR