

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 199

Heard at Montreal, Tuesday, January 13th, 1970

Concerning

PACIFIC GREAT EASTERN RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

15 demerit marks assessed Yard Foreman G.S. McFarlane

JOINT STATEMENT OF ISSUE:

Effective May 7, 1969, Yard Foreman G.S. McFarlane was advised he had been assessed with 15 demerit marks account "causing a delay to another yard crew".

The Union has requested removal of the discipline, but the request has been declined by the Regional Manager.

FOR THE EMPLOYEES:

(SGD.) R. F. LANGFORD
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. A. DEPTFORD
REGIONAL MANAGER

There appeared on behalf of the Company:

R. E. Richmond – Chief Industrial Relations Officer, Vancouver
B. G. Metz – Personnel Assistant, Vancouver

And on behalf of the Brotherhood:

R. F. Langford – General Chairman, Prince George
F. R. Ruddell – Vice Chairman, Vancouver

AWARD OF THE ARBITRATOR

It is alleged that the grievor caused a delay to another yard crew in that he left a car foul of the shop lead switch at North Vancouver terminal, so that another crew was unable to get past. There is no doubt that the grievor did knowingly leave a car foul of the shop lead switch, and the only issue is whether, in the circumstances, this was properly the occasion of discipline, and in particular for the assessment of fifteen demerit marks.

On May 7, 1969, the grievor was yard foreman in charge of the 12:30k "tramp" or extra yard assignment at North Vancouver. His duties included the unloading and loading of cars on a barge. After unloading the barge and storing the cars in the appropriate track, he then proceeded to move certain cars then on track A-6 to the barge. He had been advised by the barge attendant that the tide was going out, and felt it was necessary to move these cars to the barge as soon as possible.

Not all the cars on track A-6 were to be moved to the barge. A cut of 22 cars was to be pulled from the track, but one of these, UP 15794, the 21st car, was to be left. The grievor pulled out the string of cars, put the 22nd car on the south leg of the wye track leading to the barge slip, placed UP 15794 back on the switch lead (leading to track A-6 and others) and then proceeded with the remainder of the cars to the wye track and the barge slip.

He placed UP 15794 on the switching lead in such a way that the south end of the car fouled the shop lead switch, effectively blocking movement to the southern part of the terminal. Indeed it would seem that the car ought not to have been on the switching lead at all, but should have been pushed back into track A-6. As it was, on the switching lead and foul of the shop lead, it appears to have blocked a total of perhaps twelve tracks.

It is not clear whether or not the grievor deliberately placed UP 15794 on the switching lead in such a way as to be foul of the shop lead. If he did, it was without justification or reason. In any event, having placed the car in that position, the grievor quite deliberately left it there. His explanation was that "it was too long a move to shove this car back where it came from, with the number of cars we had ahold of". He was, as has been noted, hurrying to load the barge, and estimated it would have taken five to ten minutes to move the car back into track A-6. However this may be, it would not have taken long to move the car clear of the shop lead, even though it might still have been foul of other tracks. As it was, the grievor left UP 15794 on the switching lead, foul of the shop lead, and proceeded to the barge slip. He estimated that if all had gone well, the car would only have been left on the switching lead ten or fifteen minutes. Instead, he was unable to load the barge before the tide went out.

There was, as the grievor knew, another crew working in the area. The crew was prevented from proceeding south out of the shop yard because of the position in which the grievor had left UP 15794. From the statement of the foreman of the other crew it seems they were, or thought they were, unable to get out of the shop yard at the north end, so that they appeared to be effectively blocked in. The delay amounted to some twenty-five minutes.

It was the grievor's opinion that he was expediting the loading of the barge. In the result, of course, the loading of the barge was not in fact expedited, and another crew was delayed. On any reckoning, it was at least a mistake to have allowed UP 15794 to stop foul of the shop lead. Everyone makes mistakes, and an occasional mistake may perhaps not be subject to discipline. The grievor then made an error of judgment in failing to correct the mistake, at least to the extent of moving the car clear of the shop lead. Having regard to all of the circumstances, it is my view that in this the grievor acted without regard for the rest of the company's operations, and in a clearly unsafe manner. It was surely unreasonable to expect he would be able to return to move UP 15794 clear within ten or fifteen minutes.

The union referred to **Case No. 54**, in support of the contention that the loading of the barge was to be regarded as a matter of urgency. In that case the grievor had refused to carry out certain instructions as to the time when a barge was to be loaded, preferring to set his own schedule. That was obviously quite a different case from this, involving different principles. In this case the grievor can only be said to have performed his work in a careless and unsafe manner, and for this discipline was properly imposed.

It is possible to interpret the circumstances of this case in such a way as to lead to the conclusion that the grievor deliberately acted so as to delay the company's operations. That this would be subject to discipline, there is no doubt. I have, however, not attributed such motives to the grievor, and do not regard the facts in that way. While the interpretation I take gives more credit to the grievor, it nevertheless remains that his action on that day was properly the subject of discipline. The grievance accordingly must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR