

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 270

Heard at Montreal, Tuesday, March 9th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal for the removal of discipline assessed Engineer J. Rosaire Demers for violation of Rules 90A, 263 and 292 of the Uniform Code of Operating Rules at Ste. Claire, Quebec, on February 18, 1970.

JOINT STATEMENT OF ISSUE:

On February 18, 1970, Mr. J.R. Demers was the locomotive engineer on Extra 3652 East operating from Joffre, Quebec. Following arrival at Ste. Claire the crew finished their station work and entered the siding to clear train No. 617. After train No. 617 passed Ste. Claire, Extra 3652 East departed and proceeded down the main line against an opposing movement, westward train No. 343. A head-on collision was avoided by employees other than those on Extra 3652 East.

Following an investigation, Engineer J.R. Demers was suspended from service for nine months based on a violation of Rules 90A, 263 and 292 of the Uniform Code of Operating Rules. The Company declined the Brotherhood's request to remove the discipline.

FOR THE EMPLOYEES:

(SGD.) D. E. McAVOY
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. L. CRUMP
ASSISTANT VICE PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. C. Fraleigh – System Labour Relations Officer, Montreal
C. F. Wilson – Labour Relations Assistant, Montreal
D. H. Green – Engineer of Signals, Montreal
V. H. Mann – Trainmaster, Moncton
M. S. Drummond – Co-ordinator of Signal Practices & Development, Montreal

And on behalf of the Brotherhood:

D. E. McAvoy – General Chairman, Montreal

AWARD OF THE ARBITRATOR

The grievor's train, having completed its work at Ste. Claire, cleared the main track at 11:34 hours on the day in question, and entered the siding to clear train No. 617. The crew were to be ready to leave Ste. Claire following departure of train No. 617. Train No. 617 arrived at Ste. Claire East at 11:50, and passed Ste. Claire West at 11:52 hours. The parties are in agreement as to the time of arrival of train No. 617, and that is the time shown on the pen-graph, which records the occupation of track in the area. The parties' statements also indicate that the grievor's train was waiting at the east end of the siding.

After train 617 had passed, the grievor's train was given a slow clear signal indicating permission to leave the siding at Ste. Claire East. This was an eastward signal over the power switch and out of the siding, and it was given at 11:51 hours. It gave the grievor's train the right to proceed out of the siding. The grievor, according to the union's own statement, was finishing his lunch; it took him approximately three or four minutes to clear things up; he sounded whistle 14-B, and then received a hand signal from the head-end brakeman, who was in fact stationed on the caboose steps, two cars away.

There was an admitted violation of the rules in that the head-end brakeman was not riding in the engine, but was back in the caboose. For this reason alone the grievor might be considered subject to some discipline. There was, however, a fireman riding in the engine, and this violation of the rules might not in itself be considered particularly serious, in the circumstances.

It is said by the union that the grievor then (that is, as he was actually beginning to move out of the siding) checked the indication displayed on dwarf signal 1964, which would control the movement. It is said that the signal then showed a slow clear indication. The grievor's own statement as to this is significant. He stated, at the investigation of the matter, as follows:

A few minutes after 617 passed our location dwarf signal 1964 displayed a slow clear indication and I wondered if members of the van crew were finished their lunch. I waited another 5 or 6 minutes and then feeling that they should be finished I sounded engine whistle 14B. In looking towards the rear I recognized trainman Lamontagne (the head-end brakeman) who was on the caboose steps and gave me a proceed hand signal. I turned around in my seat since the engine was operating with short hood leading, checked the indication displayed on dwarf signal 1964 and it was a slow clear indication.

According to this account, the grievor actually began to move his train out of the siding, past signal 1964, some time between 11:55 and 12:00 hours. The signal indicated slow clear from 11:51 on, and there was a delay of several minutes after that while the grievor cleared up and made sure the crew members were ready to move. This delay was in itself admittedly a violation of Rule 263. For this the grievor, as well it seems as members of the train crew, particularly the conductor, would be subject to discipline. Again, it is not nearly as important a matter as the third violation with which the grievor is charged, namely violation of Rule 292, failure to obey a stop signal.

There having been no movement of train No. 738 for several minutes following the slow clear signal given at 11:51, the dispatcher, who needed track for train No. 343 westbound, cancelled the slow clear signal which had been shown at dwarf signal 1964. The dispatcher's action, cancelling the slow clear signal at dwarf signal 1964, was taken at 11:57 hours. There is, automatically and beyond the dispatcher's control, a four-minute time interval from the time of his action in cancelling the signal to the time the signal actually changes to a stop indication. Thus, the signal indicated on dwarf signal 1964 changed from a slow clear to a stop indication at 12:01 hours. That is what the pen-graph shows, and I have no doubt that that accurately records the fact. At 12:02 hours, a signal at Abenakis, eleven miles east of Ste. Claire indicated clear. This was a westward signal over the power switch at Abenakis and at 12:05 hours train No. 343 passed this signal, properly proceeding westward along the same track over which the grievor's train had, at least between 11:51 and 12:01, appeared to be cleared to proceed eastward. It was only through prompt action on the part of others that a collision was avoided.

The issue in this case is that of the responsibility of the grievor for these events. Whether or not the actions of the dispatcher, or the limitations of the system were blameworthy, or contributing causes to the near-disaster are not matters which need be determined for the purposes of this case, and are certainly not matters over which the arbitrator has any general jurisdiction. As has been mentioned, the fact that the head-end brakeman was not properly positioned reveals a violation of the rules (Rule 90A) although not a serious one, because of the presence in the cab

of a fireman. The undue delay in moving the train was, again, a violation, and no doubt a contributor cause of the situation which developed, but was not in itself of as serious a nature as the most serious offence alleged. That is: did the grievor in fact proceed through a stop signal in violation of Rule 292. If he did so, it would be my view that the discipline imposed must be upheld. If he did not, then the discipline imposed in respect of that violation must be set aside.

The grievor's own statement as to his action is as follows, continuing from his answer as set out above.

I began to pull out slowly and almost at once signal 1964 disappeared from my view. I then asked fireman-helper as we were proceeding out of the siding if dwarf signal 1964 was still showing a green indication and he answered in the affirmative.

As the grievor's train approached signal 1964, the signal would be obscured from the engineman's view, since the engine was operating with the "short end" leading. This state of affairs was not the grievor's fault. He would, admittedly, be justified in relying on the advice of the fireman-helper as to the indication shown by the signal, although it is not suggested that the fireman-helper gave an incorrect report. The decisive question is: what time did the grievor's train pull out of the siding, past dwarf signal 1964?

The pengraph indicates that the grievor's train in fact passed signal 1964 between 1205 and 1206 hours. At that time the signal indicated stop, and it had so indicated for at least four minutes, the slow clear signal having been cancelled at least eight minutes previously. There is no challenge to the accuracy of the pengraph, and the times which it has recorded are in other material respects in agreement with those relied on by the union. In my view it must be accepted as a fact that it was at 1205 hours that the grievor's train passed the switch, entering the territory occupied by train No. 343, and against a stop indication. The grievor had, by his own statement stopped between one and one-half and two car lengths from the signal. Even if he lost sight of the signal almost at once, it surely could not have taken four minutes for the engine to cover the distance to the signal. Thus, even if it be assumed (and there is no reason to do so) that the fireman-helper gave incorrect advice as to the indication shown by the signal, the grievor himself surely would have seen a stop signal had he looked before moving.

The grievor's own statement – apart from his denial of proceed against a stop indication – supports this conclusion. It is common ground that train No. 617 arrived at 11:50 hours, as the pengraph records. The grievor stated that one or two minutes after the passing of train No. 617, signal 1964 displayed a stop indication.

After a further period of two or three minutes, it displayed a slow clear indication. These figures were said to be approximate, and it may be noted that the signal indicated clear at 11:51. This suggests that the grievor did not see the change of signal, but did observe that it was clear some time after 11:51. He then waited another five or six minutes before sounding the engine whistle and receiving a signal from the head-end brakeman on the caboose. Thus, on his own account, he could not have begun to move at least until the clear signal had been cancelled, which was at 1157. It would appear from his account that it was later than this that he began to move. And yet the hard fact is that he crossed the switch at 1205. Given that he was only one and one-half to two car lengths from it, the conclusion is irresistible that he began to move after 1201, that is, after the signal indicated stop. I am therefore forced to the conclusion that the grievor was in violation of Rule 292. The seriousness of such a violation is not in doubt.

For the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR