CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 439

Heard at Montreal, Tuesday, April 9th, 1974

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Discipline of Brakeman G.W. Murray for violation of Operating Rules, Toronto, November 8, 1970.

JOINT STATEMENT OF ISSUE:

On November 8, 1970, Extra 6761 South passed Signal 279, Scott Street Interlocking Station, Toronto. Following investigation of the incident Brakeman G.W. Murray, along with two other members of the crew who were riding the engine, was suspended for six months for violation of Operating Rules 34 and 292.

The Union appealed Brakeman Murray's discipline on the grounds that: **a)** there was not sufficient proof of the rule violations, and **b)** the discipline was, in any case, too severe.

The Company has declined the Union's request to reduce the suspension.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) G. R. ASHMAN (SGD.) G. H. BLOOMFIELD

GENERAL CHAIRMAN ASSISTANT Vice-President, LABOUR RELATIONS

There appeared on behalf of the Company:

A. D. Andrew – System Labour Relations Officer, Montreal

M. Delgreco – Labour Relations Assistant, Montreal

J. R. Thompson – Assistant Manager Rules, Montreal

E. B. Roach – Trainmaster, Toronto

J. E. Hirst – Supervisor Operations, Toronto Terminals Railway, Toronto

J. Welter – Train Movement Director, Toronto Terminals Railway, Toronto

And on behalf of the Brotherhood:

G. R. Ashman – General Chairman, Toronto

F. Oliver – Secretary, General Committee, Toronto

AWARD OF THE ARBITRATOR

The operating rules referred to relate to signal indications and the procedure to be followed with respect to them and, in particular, to a stop

indication. On the day in question, Brakeman Murray was riding in the engine of Extra 6761 South. The train did pass Signal 279. If in fact that signal displayed a stop indication at the time the train passed, then clearly there was a violation of the Uniform Code of Operating Rules, and the front-end brakeman would be among those having a responsibility for the violation and thus subject to discipline.

On the basis of all the material before me it is my conclusion that the signal did display a stop indication at the time. The Company's investigation of the signal following the incident indicated that it was functioning properly, and while some aberrant and inexplicable malfunction cannot be said to be impossible, it is highly improbable. There is evidence that the signal was set for a stop indication, and that, in any event, the only signals it could have displayed, because of the indications of other signals which affected its operation, were restricting or stop indications. There is no evidence to the contrary. There is some doubt as to whether the siren was sounded after the train had passed the signal. This relates to what might have happened after the offence was committed, but it does not substantially affect the question of what the indication was at Signal 279 when the train went by.

It must be my conclusion that the grievor's train did in fact pass a stop indication, and that there was therefore a violation of Rule 292. It is clear that there was also a violation of Rule 34, for in the statements made by each of the crew members it is acknowledged that they simply did not know what the signal was as they went by. The procedure of calling out the indication was certainly practicable, but it was not followed.

There can be no doubt that discipline was properly imposed. The question which remains to be determined is as to the extent of an appropriate penalty. That question is to be determined having regard to the nature and circumstances of the offence and to the record of the employee, as well as any particular circumstances that may bear on the matter. It has also been held that the imposition of discipline must be consistent as between employees in similar circumstances.

There can be no doubt that failure to obey a stop indication is a serious offence. In the case of those riding in the engine, all of whom have a responsibility under the rules for the observance of signal indication it would be difficult to assess degrees of responsibility. Certainly the sort of distinction which was drawn in **Case No. 168** between the responsibility of a conductor and that of a brakeman cannot be drawn here, for that case involved a different type of breach of the rules. Any such distinction in the instant case would be a fine one. In any event, the records of the other employees, or the considerations which might have affected the discipline imposed on them, are not before me. This case involves only the assessment of discipline against the grievor.

While there is no doubt of the seriousness of the offence, or the grievor's responsibility, it may be noted that it did not occur in the context of any other misconduct. The crew members did give a precise account of the other indications which had been passed, and they were aware, immediately after passing Signal 279, that something was unusual about the route they were following.

There is no evidence of any past misconduct on the grievor's part which would support the imposition of any discipline more severe than that which would be appropriate for the offence itself and there were no special considerations suggested which would affect the matter one way or the other.

In a number of cases heavy penalties have been upheld for offences of this type. In some of these the only issue seems to have been whether the offence was committed, and the awards would not be decisive of the question of the severity of the penalty. In other cases, however, lesser penalties have been imposed, the Union referring to cases of suspensions ranging from thirty to ninety days, and of the imposition of from fifteen to thirty demerit marks. Viewed in this context, it is my view there was not sufficient justification for the imposition of a penalty as severe as that of a six-month suspension in the grievor's case.

While the matter is a difficult one, it is my view, balancing the seriousness of the offence against the grievor's clear record, and the comparisons, such as they are, which can be made with other cases, that a suspension for a period of up to sixty days would not have gone beyond the range of reasonable disciplinary responses to the situation.

For the foregoing reasons, the grievance is allowed in part. is my award that the suspension for six months be reduced to one of sixty days and his record revised accordingly. The grievor is to be compensated for loss of earnings for the rest of the period of his suspension.

(signed) J. F. W. WEATHERILL

ARBITRATOR