

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 464

Heard at Montreal, Tuesday, September 10, 1974

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

The discipline cases of Conductor K.S. Murdoff and Trainman R.B. Rabby, Sutherland, whose records were debited with 30 and 15 demerit marks respectively, for an incident involving a rule violation on the part of a crew member which was not reported in accordance with the provision of General Rules E and 106, Paragraph 2 of the Uniform Code of Operating Rules, Lanigan, October 6th, 1973.

JOINT STATEMENT OF ISSUE:

The Union contends that Conductor Murdoff and Trainman Rabby's responsibility was not established by the evidence produced at the investigation as specified in Article 32, Clause (d). The Company contends that the employees' responsibility was established by the evidence produced at the investigation and declines to remove the discipline.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) R. T. O'BRIEN (SGD.) W. J. PRESLEY

GENERAL Chairman GENERAL MANAGER, Operation & Maintenance, PRAIRIE REGION

There appeared on behalf of the Company:

J. A. Sampson – Supervisor, Labour Relations, Winnipeg

F. B. Reynolds – Assistant Supervisor, Labour Relations, Winnipeg

J. Ramage – Special Representative, Labour Relations, Montreal

And on behalf of the Union:

R. T. O'Brien – General Chairman, Calgary

J. H. McLeod – Vice Chairman, Medicine Hat

P. P. Burke – Vice Chairman, Calgary

AWARD OF THE ARBITRATOR

The grievors were conductor and trainman scheduled to operate Train No. 85, Lanigan to Prince Albert, on October 6, 1973. They left their residences in Saskatoon at 2300 on the night of October 5, drove to Lanigan, proceeded to the caboose and went to sleep, their train being ordered for 0530. Another crew member, Trainman Demeria, arrived at Lanigan by train, and also went to sleep in the caboose.

At 0540 on October 6, the engineman scheduled to operate Train No. 85 telephoned the company operator at Lanigan to request that someone of the train crew drive to Colousey to pick him up, as the RCMP would not let him drive his truck. The two grievors went to pick up the grievor, and were stopped en route by an RCMP constable, who was accompanying the engineman. The RCMP constable placed the engineman in Conductor Murdoff's custody, saying that he was charged with impairment, could not drive his vehicle, and should not drive an engine for two hours. It seems

that the engineman had been arrested by the constable about 0335 on the morning in question, when he was found sleeping in his truck, which was parked on the shoulder of the highway with the motor turned off. It was at 0615 that the engineman was placed in the custody of Conductor Murdoff.

Trainman Rabby drove the engineman to Lanigan in the engineman's truck, while Conductor Murdoff drove back by himself. On arrival at Lanigan at approximately 0645, Conductor Murdoff permitted the engineman to book in and board the unit. At 0710 he commenced switching operations and he fulfilled the requirements of his duties on that date. Neither Trainman Rabby nor, it would seem, the other trainman, made any objection, and no report was made to any Company officer.

Sometime after this incident but before November 7, the Assistant Superintendent and the Master Mechanic heard about the incident, confronted the grievors with their information, and decided merely to admonish them of the possible consequences of being involved with Rule G of the Uniform Code of Operating Rules – the rule which prohibits the use of intoxicants or narcotics by employees subject to duty. In my view, such an admonition was proper in the circumstances.

The matter was, however, further investigated by another assistant superintendent, the grievors were called in for investigation and were ultimately assessed the penalties above noted. The engineman in question pleaded guilty, on November 14, to a charge under Section 236 of the Criminal Code, and was convicted.

Rules E and 106, para. 2, of the Uniform Code of Operating Rules are as follows:

E. Employees must render every assistance in their power in carrying out the rules and special instructions and report promptly to the proper authority any violation thereof.

106. Conductors, enginemen, and pilots if any, are responsible for the safety of their trains and the observance of the rules and under conditions not provided for by the rules must take every precaution for protection. This does not relieve other employees of their responsibility under the rules.

The material before me shows that the two grievors were aware that the engineman had been stopped by the RCMP, and that he was not permitted to drive. This would certainly suggest to them the possible violation of Rule G by the engineman. That is a serious matter, and they would be under a duty to report it. While employees should not be expected to report their fellow-employees on the basis of their least suspicions, in these circumstances it must have been clear to the grievors that the matter should have been reported. For that, as I have indicated, they were properly admonished.

There is, however, no evidence of any behaviour on the engineman's part which would (apart from the circumstances of his arrival at work) suggest that the crew members were under any obligation to report him. Conductor Murdoff rode in the engine and stated that the engineman's response to hand signals was "100%". The material before me does not show that the engineman was in fact impaired at the time, or that the crew members had, on the basis of their observation of him, any reason to feel obliged to report. For this reason it would be my view, in any event, that the penalties ultimately imposed on the grievors were too severe.

In any event, it is noted that the discipline here imposed was assessed after discipline in the form of an admonishment had already been imposed. While two statements from each of the grievors were subsequently taken, I think it cannot be said that these reveal any previously unavailable ground for discipline and indeed, as I have indicated above, they show that the grievor's observation of the engineman did not, in itself, give them grounds for reporting him. In the absence of the discovery of some previously unavailable evidence, there was no occasion for the company, which had disciplined the grievors over this matter, to impose discipline a second time.

For the foregoing reasons, the grievances are allowed. It is my award that the demerit points in question be removed from the grievors' records.

(signed) J. F. W. WEATHERILL

ARBITRATOR