

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 473

Heard at Montreal, Tuesday, October 8th, 1974

Concerning

Canadian NATIONAL RAILWAY COMPANY

and

United TRANSPORTATION Union (E)

### DISPUTE:

Dismissal of Locomotive Engineer F. Bishop of Corner Brook, Newfoundland.

### JOINT STATEMENT OF ISSUE:

On July 25, 1973, Locomotive Engineer F. Bishop was employed on Freight Extra 919 West, which was involved in a derailment and side collision at mileage 437.4, Port aux Basques Subdivision.

Following investigation, Locomotive Engineer Bishop was discharged effective August 31, 1973, for violation of Rule G, Rule 113, seventh paragraph of Rule 221 and Rule 403, of the Uniform Code of Operating Rules.

On the grounds it did not agree "that the degree of discipline assessed was justified," the Union appealed the discipline.

The appeal was declined by the Company.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) O. W. MILES (SGD.) G. H. BLOOMFIELD

GENERAL CHAIRMAN ASSISTANT Vice-President, LABOUR RELATIONS

There appeared on behalf of the Company:

G. A. Carra – System Labour Relations Officer, Montreal

M. Delgreco – Labour Relations Assistant, Montreal

A. E. Woodhouse – Regional Master Mechanic, Moncton

G. D. Adair – Regional Trainmaster, Accident Prevention, Moncton

J. R. McLeod – Labour Relations Assistant, Moncton

J. K. Kirby – Program Supervisor, Maintenance of Way, Newfoundland

And on behalf of the Brotherhood:

O. W. Miles – General Chairman, Lucerne

P. LaRochelle – General Chairman, Quebec City

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## AWARD OF THE ARBITRATOR

There is no doubt that the grievor, a locomotive engineer, did violate Rule 113, the seventh paragraph of Rule 221, and Rule 403 of the Uniform Code of Operating Rules. Those rules are as follows:

### Rule 113

When for any reason a siding or crossover is to be used, speed through turnouts must not exceed fifteen miles per hour unless otherwise provided.

### Rule 221 (seventh paragraph.)

A train must not proceed without a clearance when the train order signal affecting it is in Stop or Caution indication while any portion of the train is passing the signal.

### Rule 403

When the STOP signal is displayed for trains in the direction in which the signal applies, it will indicate the delivery of restrictive train orders which may affect the train at that station and the train must stop before fouling the siding switch where an opposing train clears, except where the train order signal is beyond such switch, or where there is no siding, stop must be made before train passes the signal.

On the day in question the grievor was the engineman on Train Extra 919 West consisting of four diesel units, 16 loads and 67 empties, from Corner Brook to Port aux Basques. At Spruce Brook, his train passed a train order Signal, displaying a stop indication, at approximately thirty miles per hour. The train was stopped as the result of an emergency brake application by the conductor, who was riding in the caboose. The engineer had certainly violated Rule 221 and Rule 403.

Later in the trip, Extra 919 West was to meet Extra 919 East at Harry's Brook. The grievor's train was to go on to the siding there while Extra 913 was on the main track. The head-end brakeman of Extra 913 East had lined the switch for the siding for Extra 919 West, while awaiting its arrival. Although, as Rule 113 provides, the speed through the switch should not have exceeded fifteen miles per hour (and there was no provision to the contrary), Extra 919 West went through the turnout at thirty-five miles per hour, obviously a very serious violation of the rule. The result was a derailment causing considerable damage.

The grievor made a number of references to faults in the braking system, and said that there was no use applying the emergency brake. All of the other evidence is to the contrary. The speed graph shows that, in the course of its trip the train did respond to applications of the brakes and of course it was by an emergency application of the brakes that the train had been stopped at Spruce Brook. Even if the grievor had had any real reason to doubt whether the emergency brakes would work, he obviously ought to have tried their application. In any event, the grievor's complaints were general to the effect that the brakes were slow in releasing, and even if his views in this respect were well-founded, they would not explain his idea that the brakes would not apply properly. The grievor's explanation of his handling of the train throughout the trip was very unsatisfactory, and his conduct seems to have been quite erratic.

The foregoing would in itself support the imposition of very severe discipline on the grievor. It is the Company's position that the grievor was also in violation of Rule G which prohibits the use of intoxicants by employees subject to duty, or their possession or use by employees while on duty. There is no direct evidence of the use or possession of intoxicants by either the grievor or the front-end brakeman who was with him in the cab. There is nothing to suggest that the grievor had been drinking prior to reporting for duty. There is, however, direct testimony of two Company officers who spoke to the grievor some time after the derailment, at the site. Their evidence was that he walked unsteadily, that his eyes were glazed and that there was a smell of liquor on his breath. It would not be surprising that an engineman who had derailed his train would present a somewhat abnormal aspect, but the smell of liquor could not be accounted for that way. There is, on the other hand, the statement of a railway police officer, who spoke to the grievor later in a shed at the end of the siding, where he was having tea, and who did not consider him to be under the influence of alcohol. Further, there is no evidence of any bottle or other container of alcohol in or near the cab.

On the evidence, there is obviously a doubt as to whether the grievor was in violation of Rule G. Considering all of the circumstances, however, I think it has been shown on the balance of probabilities – which is the proper test – that the grievor was to some degree under the influence of alcohol while operating the train. The statement of the railway police officer was made with a respect to a later time than that with respect to which the other Company officers gave evidence, and does not disprove the hypothesis that the grievor had been drinking earlier. His odd conduct following the derailment, when he was seen wandering about in the bushes looking, as he said, for a bottle-Jack he had thrown there years ago, and his apparent lack of concern over the whole matter, are certainly supportive of the view that he had been drinking. His erratic operation of the train, for which no satisfactory explanation was given, corroborates this, in my opinion. Finally, there is the evidence of two Company officers that they did smell liquor on his breath. It is my conclusion from all of the foregoing that the grievor was in violation of Rule G.

The violation of this rule by an engineman is clearly an extremely serious matter. When that is considered together with the other rule violations which the grievor admittedly committed, it seems to me to be clear that there was just cause for the discharge of the grievor. The grievance must accordingly be dismissed.

**(signed) J. F. W. WEATHERILL**

**ARBITRATOR**