CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 499

Heard at Montreal, Tuesday, February 11, 1975

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

Brotherhood of Locomotive Engineers

DISPUTE:

Assessment of forty-five (45) demerit marks to engineman R. Ursic. Request by the Brotherhood for the removal of discipline.

JOINT STATEMENT OF ISSUE:

On August 22, 1974 at approximately 13.10 hours, engineman Ursic was a member of the crew consist on switching unit #220 in C yard at Carol Lake (Labrador City, Nfld.) which was involved in a collision with a P&H Mobile Crane resulting in one fatality namely crane operator and one person seriously injured. Following investigation held on August 23, 1974 the above employee was found to be in violation of the General Notice, General Rules B, E and M and Rule 108 of the Uniform Code of Operating Rules and consequently assessed forty-five (45) demerit marks.

The Brotherhood filed a grievance. The Company rejected same.

FOR THE EMPLOYEE: FOR THE COMPANY:

(SGD.) R. A. SMITH (SGD.) F. LeBLANC

GENERAL CHAIRMAN Supervisor, LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin – Counsel

M. Gauthier – Assistant Labour Relations Officer, Sept-Îles

A. Beliveau – Assistant Labour Relations Officer, Sept-Îles

W. Adam – Trainmaster, Transportation, Sept-Îles

N. West – Trainmaster, Transportation, Sept-Îles

R. Morris – Trainmaster, Transportation, Sept-Îles

And on behalf of the Brotherhood:

R. A. Smith – General Chairman, Sept-Îles

E. J. Davies – Vice-President, Montreal

J. P. Riccucci – Special Representative, Montreal

U. Allen – Locomotive Engineer, Sept-Îles

AWARD OF THE ARBITRATOR

The grievor was the engineman of switching unit 220 in C Yard at Carol Lake Yard on August 22, 1974. The accident in which he was involved is described in **CROA Case No. 494**, which dealt with the grievances of the conductor and brakeman. The accident occurred while the grievor's train, consisting of an engine and six cars, was making a northbound reverse movement. The engine itself was facing south. The conductor and brakeman, who were at the south end of the train, could not pass visual signals to the engineman, as they were not properly positioned to do so. The grievor's forward visibility was limited: he could not see the track, according to his own statement.

It would, in my view, be improper for the engineman to move the train at all in those circumstances, except on the signal of the conductor or brakeman. Under Rule 12, radio may be used in lieu of hand signals. In such case, the direction and distance of any move must be acknowledged. In the instant case, the grievor was instructed by the conductor to "back up and take us out", it being the grievor's statement that he was to do this at about 5 mph. This was indeed the instruction, although it is not clear whether it was acknowledged or not. There is no reason to believe there was any failure of radio equipment or interruption of communications. In my view, in these circumstances, the grievor was entitled to rely on this radio instruction, just as he would have been entitled to rely on the hand signals of a trainman he could see. The direction of the move was not in question, and I think that in the circumstances the instruction to "back us out" was clear enough as to the distance involved. The collision with the mobile crane was due, not to the engineman's inability to see, but rather to the trainmen's failure to keep a proper lookout, a matter dealt with in **Case No. 494**.

The grievor was not without fault, however. I think that in movements such as this the use of radio signals involves greater risks than the use of hand signals, in that the source of the signal may disappear without the engineman's becoming quickly aware of it. It was incumbent on the grievor to ensure care was taken in a movement such as this. He was aware, from the southbound movement he had made shortly before that there were people in the area, and of course, as the Union pointed out, there was considerable vehicular traffic and movement of equipment in the area. The grievor did not ring his bell (because "it only rings twice and quits") and did not sound his whistle. These simple precautions might not have averted the accident entirely, but might well have prevented the fatality and serious injury which were caused.

For the foregoing reasons I conclude that the grievor's conduct did not involve the very serious rule violations which had been alleged, but that it did subject him to some discipline. I cannot agree with the Union's contention that the grievor did not receive proper notice of investigation, nor with the suggestion that the unsafe condition: was created by the Company itself. It is my award that the forty-five demerits assessed against the grievor be removed, and that a fifteen demerit penalty be substituted therefor.

(signed) J. F. W. WEATHERILL

ARBITRATOR