

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 500

Heard at Montreal, Tuesday, February 11, 1975

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Assessment of thirty (30) demerit marks to engineman P. McGrath. Request by the Brotherhood for reduction of discipline due to severity of same.

JOINT STATEMENT OF ISSUE:

On September 22, 1974 at approximately 14.05 hours, engineman McGrath was a member of crew consist on yard engine #133 in Carol Lake Yard (Labrador City, Nfld..) which was involved in a collision with a boom truck at Butler's Crossing. Following investigation held on September 25, 1974, the above employee was found to be in violation of the General Rule B, Rules 93 and 108 of the Uniform Code of Operating Rules and consequently assessed thirty {30} demerit marks.

The Brotherhood filed a grievance. The Company rejected same.

FOR THE EMPLOYEE:

(SGD.) R. A. SMITH
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) F. LeBLANC
SUPERVISOR, LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin	– Counsel
M. Gauthier	– Assistant, Labour Relations, Sept-Îles
A. Beliveau	– Assistant, Labour Relations, 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. Ricucci	– Special Representative, Montreal
U. Allen	– Locomotive Engineer, Sept-Îles

AWARD OF THE ARBITRATOR

The grievor, an experienced engineman, was the engineman on Yard engine 133 on September 22, 1974, at Carol Lake Yard. At approximately 14:05 on that day the grievor, with a conductor and brakeman, was proceeding down mine line with a light unit. He observed a truck at a crossing about twenty-five car lengths ahead. He was travelling, according to his statement, at 15 M.P.H., and was using dynamic braking. When he was about fifteen car lengths from the crossing, he began to reduce speed. When he was about ten to twelve car length away, he concluded that the truck was foul of the track, he then reduced speed to 5-6 M.P.H., and applied independent braking while releasing dynamic braking. he considered that he would stop short of hitting the truck, but he did not. There was contact with truck, apparently causing minor damage.

It is not denied that the grievor was in fact in violation of the uniform Code of Operating Rules, particularly those with respect to speed, and to selecting the safe course. Other members of the crew, it seems, saw the truck at the crossing even before the grievor did, but we are here concerned only with his responsibility. He was aware at twenty-five car lengths that there was a truck at the crossing, and if he had taken the safe course of applying braking at that time the accident would not have occurred. It was contended on his behalf by the Union that conditions at Carol Lake Yard are generally unsafe, and that vehicles and pieces of equipment of all sorts are to be found through out the yard, operated by persons not subject to a strict code such as the UCOR. If this is so, it is clearly incumbent, not only on the Company to take proper steps to live up to its responsibilities to its employees and others (a matter over which I have no jurisdiction) but also on the employees to be particularly vigilant in the carrying out of their duties. Here the grievor did not take the step of slowing down in time, so that when it was determined that the truck was indeed foul of the track, It was too late to avoid an accident. Of course the operator of the truck would himself be responsible, if he knowingly or carelessly stationed his vehicle there. But while the truck driver's fault was one cause of the accident, it is clear that the grievor's own failure to operate in accordance with the rules was itself a direct cause of it, and I have no doubt that he was properly subject to discipline on that account.

It was contended that the grievor did not receive proper notice of the investigation, but in my view the notice which the grievor acknowledged receiving set out quite plainly the subject of the investigation. It would not be expected that such notice would set out any particular rules the grievor might have violated. What those would be might appear only as a result of the investigation itself. It was also contended that the Company itself has a responsibility for safety in those areas where its operations are carried out. There can be no doubt that that is so. Whether or not the Company was lax in any particular way does not appear in this case, but in any event the enforcement of this obligation is not a matter within the Jurisdiction of an arbitrator. It may be observed that one aspect of the Company's responsibility with respect to safety is that it ensure, through proper discipline if necessary, that its employees comply with the operating rules.

In the instant case, the grievor did not comply with the operating rules, and as a direct result his engine came in contact with a truck which was foul of the track. This is a serious matter, and is deserving, in my view, of a relatively severe penalty. In my view, the assessment of thirty demerits did not go beyond the range of reasonable disciplinary responses to the situation. Accordingly, the grievance is dismissed.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR