

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 505

Heard at Montreal, Tuesday, April 8th, 1975

Concerning

### QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

### UNITED TRANSPORTATION UNION (T)

#### **DISPUTE:**

Assessment of thirty (30) demerit marks to Conductor Yates and brakeman Hopkins. Request by the United Transportation Union for reduction of discipline due to severity of same.

#### **JOINT STATEMENT OF ISSUE:**

On September 22nd, 1974, at approximately 14:05 hours, both trainmen were members 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 25th, 1974, the above employees were found to be in violation of the General Notice paragraph General Rules B and D, the definition of Restricted Speed, Rules 107 and 108 of the Uniform Code of Operating Rules and Instruction B-1 governing operation of Air Brakes and Brake Appliances of Time Table No. 14 and consequently assessed thirty (30) demerit marks.

The United Transportation Union filed a grievance. The Company rejected same.

#### **FOR THE EMPLOYEES:**

**(SGD.) J. H. BOURCIER**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) F. LeBLANC**  
SUPERVISOR – LABOUR RELATIONS

There appeared on behalf of the Company:

F. LeBlanc	– Supervisor, Labour Relations, Sept-Îles
M. Gauthier	– Labour Relations Assistant, Sept-Îles
R. Morris	– Trainmaster, Transportation, Sept-Îles
N. West	– Trainmaster, Transportation, Sept-Îles

And on behalf of the Brotherhood:

H. Lebel	– General Chairman Sept-Îles
J. H. Bourcier	– Advisor, Sept-Îles

### **AWARD OF THE ARBITRATOR**

The general circumstances which led to the imposition of discipline on the grievors are set out in **Case No. 500**. The responsibility of the conductor and brakeman (the grievors in the instant case) is, however, a separate question from that of the engineman (the grievor in **Case No. 500**), and even as between the conductor and the brakeman different considerations may apply.

Mr. Yates, as conductor, might be thought to have an overall responsibility somewhat greater than that of a brakeman, but the nature of this responsibility, or its demands, would vary with the particular facts involved. In this case, both grievors were riding in the cab of the engine, and since they were thus together, there would be, I think, a greater responsibility for the movement on the conductor than on the brakeman. Mr. Yates first saw a truck near the track at about 30 or 40 car lengths. It was not then clear that it was foul. Neither was it clear that the truck was not foul, and Mr. Yates ought then to have called it to the engineman's attention. The engineman had not in fact seen the truck at that time. Mr. Hopkins drew the truck to the engineman's attention at a distance of about 20 to 25 car lengths. It was not until later, when it became apparent that the truck was foul of the track, and then someone could be seen waving his arms, that Mr. Yates "mentioned it" to the engineman, and told him to blow the whistle. These steps were too little and too late. While Mr. Yates may have expected the train would stop in time he did not take the proper steps to ensure that it could do so, either when he first saw the truck, or when he realized it was foul of the track.

In these circumstances, the same reasoning must apply in the case of the conductor as in that of the engineman, and I think it would be wrong to interfere with the penalty imposed on the conductor for this serious failure to carry out proper procedures.

Mr. Hopkins, as brakeman, had a responsibility which I think may properly be described as subordinate to that of the conductor particularly where, as here, the two men were together in the cab. Mr. Hopkins, like Mr. Yates, saw the truck at a distance of 30 to 40 cars, but made no communication about it. The conductor had a duty to do so, but this did not relieve the brakeman of his obligation, especially where the conductor was silent. According to the employees' statements, Mr. Hopkins drew the others' attention to the truck at a distance of about 20 to 25 cars. This was about the time when the engineman first saw the truck, and seems to have been the first communication. Mr. Hopkins was not then sure whether the truck was foul or not, while his communication was somewhat belated, it was a proper and responsible step. It was shortly thereafter, at about 15 cars' distance from the truck, that the engineman began to reduce speed. Mr. Hopkins, it seems, felt, as did the others, that the train would stop in time. That it did not do so is primarily attributable to the misjudgment of the engineman. Conductor Yates had been employed with the railway for twelve years, and Mr. McGrath had been an engineman for six years. Mr. Hopkins had been with the railway for thirteen months. This difference in experience does not excuse Mr. Hopkins but it may explain to some degree his failure to take more effective action, given the presence of the two more experienced employees, whose assignments involved a higher degree of responsibility, as I have suggested.

Having regard to these particular circumstances, it is my view that the penalty imposed on brakeman Hopkins was excessive. In the circumstances, the assessment of fifteen demerits would not have gone beyond the range of reasonable disciplinary responses to the situation.

For the foregoing reasons it is my award that the grievance of Mr. Yates be dismissed; and that the penalty imposed on Mr. Hopkins be reduced to an assessment of fifteen demerits.

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