CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 558

Heard at Ottawa, Tuesday, July 13th, 1976

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Train Dispatcher D.L. Barrett, Nelson, B.C. was reduced to the position of Operator for his failure to address a restricting order to the train being restricted and for his failure to check the order numbers on the clearance for correctness, violation U.C.O. Rule 204, paragraph 1, and Rule 211, Cranbrook Subdivision, November 4, 1975.

JOINT STATEMENT OF ISSUE:

The Company contends that Mr. Barrett violated the above quoted rules which involved two opposing trains on the Cranbrook Subdivision. These violations could have resulted in a very serious collision and the employee was therefore not wrongfully disciplined.

The Union contends an unsafe practice was permitted to exist for Company convenience and therefore, the employee was wrongfully disciplined and should be returned to his former position with all rights restored and paid for time lost.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) R. J. CRANCH	**(SGD.) J. D. BROMLEY**
GENERAL CHAIRMAN	**GENERAL MANAGER, OPERATION & MAINTENANCE**

There appeared on behalf of the Company:

L. J. Masur	– Supervisor Labour Relations, Vancouver
L. W. Warner	– Assistant Superintendent of Transportation, Vancouver
J. A. McGuire	– Manager, Labour Relations, Montreal
J. E. Palfenier	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

R. J. Cranch	– General Chairman, Montreal
D. C. Duquette	– General Chairman, Montreal

AWARD OF THE ARBITRATOR

Although it is not entirely clear from the Joint Statement, both parties agree that Dispatcher Barrett did in fact commit a very serious error in clearing Train No. 76 eastbound from Fort Steele, without including in his delivery Train Order No. 278, which gave Extra 5725 West, travelling from Elko to Fort Steele, right of way over No. 76. These two trains were thus involved in opposing movements along the same track, but the crew of Train No. 76 was unaware of the opposing movement, whereas the crew of Extra 5725 West believed that No. 76 could not enter the territory until their arrival at Fort Steele. The risk of grave danger which was created is apparent.

Fortunately, a member of the crew of Train No. 76 heard communications from Extra 5725 West over the engine radio, and realized that Extra 5725 West was in the territory between Elko and Fort Steele. He verified that that movement did not show in the train orders he held, and then went to the station to inquire into the matter. As a result, the grievor issued new orders and the potential danger was avoided. This did not, of course, affect the seriousness of the original mistake.

The Union advances two principal arguments to support the conclusion that the discipline imposed was too severe. One of these is that the grievor had followed an unsafe practice, which the Company had allowed to exist in using portions of fourth-class schedules for the operation of trains between Fort Steele and Sparwood, on the Cranbrook Subdivision. The operation of Eastward schedule trains on the Cranbrook Subdivision can be provided for by originating trains at Cranbrook or at Fort Steele. On the day in question, train No. 76, scheduled from Cranbrook to Crowsnest, was annulled from Cranbrook to Fort Steele. Another train, which came into Fort Steele from a point to the North on the Windermere Subdivision, was then established as Train No. 76 eastbound from Fort Steele to Crowsnest. This train was created by train order at Fort Steele.

This method of operation does not appear to be unsafe, nor contrary to the Uniform Code of Operating Rules. The Company did subsequently issue a direction that in such cases the eastward train from Fort Steele should be run as an Extra or by using one of the "short schedules" in the timetable rather than one of the Cranbrook to Crowsnest schedules. In any event it would be necessary that any eastward train from Fort Steele at the time in question receive Train Order 278 (which had given right of way to Extra 5725 West).

The first argument advanced by the Union does not, therefore, justify or explain in any way the grievor's mistake, or reduce its significance. The second argument relates to the nature of the discipline imposed. It is to the effect that in the context of a demerit-point system of discipline, demotion is not a proper penalty. With respect to most sorts of employee "misconduct", I think that this argument is correct. Indeed, it is not only in the context of a demerit-point system that it is valid, but it is true as well of a system where employees are warned or suspended for improper behaviour. In the instant case, however, the grievor's fault was not of this type; it was an error which went, as was said in the award in the **Chatfield case**, between the same parties "to the very essence of the grievor's work: the lining up of trains along sections of track so that they reach their destinations expeditiously, and without colliding with one another".

In the **Chatfield case** the following observations were made:

> Of course employees make mistakes from time to time in the performance of any job. In some sorts of jobs these mistakes may relate to the very "essence" of the job, without revealing any fundamental incompetence or unreliability of the employee. In a case such as this, however, the responsibility and the risks involved are so great, and the importance of following a proper procedure so clear, that it can properly be said that the grievor's conduct really does indicate that he could not be relied upon to perform this vital job in the proper manner. It is my conclusion that this was a proper case for a demotion.

It is not clear to me in this case, as it was in the **Chatfield case**, that the grievor's conduct indicates that he could not be relied on to perform his job in the proper manner. His error was one of oversight; he issued the order in question to Elko and Cranbrook, but could not contact the operator at Fort Steele, and it then slipped his mind. Of course he ought to have followed a procedure that would prevent this, and there is no excuse for his error. The one error, however, does not establish incompetence to perform the job. Because of the importance of correct procedures in this job, I would not consider that the assessment of demerit points or even the imposition of a suspension would constitute an appropriate disciplinary measure. While an unlimited, indefinite or permanent demotion goes too far in

my view, a limited demotion would be appropriate, since it would, one hopes, permit the employee to perform related work, and bring home to him the necessity for complete accuracy.

In the circumstances of this case, it is my view that it would have been proper to demote the grievor for a period of six months. He would be entitled to return to his job of Dispatcher, providing he still met the appropriate qualifications and subject to any intervening seniority claims, at the end of that period. Accordingly, it is my award in this case that if the grievor wishes to return to the classification of Dispatcher, he may now do so in accordance with the foregoing; he will, in that event (but not otherwise) be entitled to compensation for the period from a date six months after his demotion until he returns to the classification.

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