CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 569

Heard at Montreal, Wednesday, October 13, 1976

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Dismissal of Trainman D.G. Gardiner of Belleville, Ontario, for his responsibility in head-on collision December 20,1974.

JOINT STATEMENT OF ISSUE:

On December 20, 1974, Trainman D.G. Gardiner was employed as Head-End Brakeman on Freight Train Extra 9487 East which was involved in a head-on collision with regular passenger train No. 45 at mileage 187.4, Kingston Subdivision.

Following investigation, in connection with train movement collision between Extra 9487 East and train No. 45 at mileage 187.4 of the Kingston Subdivision, 20 December, 1974, Trainman Gardiner was discharged, effective 20 December, 1974 for violation of Uniform Code of Operating Rules 3, 34, 83F, 111, 210C and 285; violation of General Instruction Form 696, A-209; and violation of track speeds found in Footnote 5 to Rideau Area Operating Timetable No. 28.

The Union contends that the rules were not violated, and has requested that all discipline be removed and Mr. Gardiner returned to Company service with full seniority and that he be compensated for all loss of earnings.

The Company declined the Union's request.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(Sgd.) F. R. OLIVER	**(Sgd.) S. T. COOKE**
ASSISTANCT GENERAL CHAIRMAN	**ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

G. A. Carra	– System Labour Relations Officer, Montreal
G. E. Morgan	– System Labour Relations Officer, Montreal
J. R. Gilman	– Regional Labour Relations Officer, Toronto
W. J. Rupert	– Regional Rules Supervisor, Toronto
G. B. Sweezey	– Superintendent, Belleville
G. L. Mann	– Regional Planning Officer, Toronto
J. Tobin	– Assistant Superintendent, Oshawa
K. Setter	– Regional Training Officer, Toronto

And on behalf of the Union:

F. R. Oliver	– Assistant General Chairman, Toronto
R. A. Bennett	– General Secretary, Sarnia
J. B. Meagher	– Local Chairman, Belleville

AWARD OF THE ARBITRATOR

It is the Company's contention in this matter that the grievor was in violation of the rules referred to and that, in the circumstances, discharge was an appropriate penalty. It is the Union's contention that the grievor was not in violation of the rules and, further, that the Company failed to train the grievor properly, so that responsibility for the collision which occurred cannot be attributed to him.

The rules alleged to have been violated may be seen to fall, from the point of view of their relationship to the collision, into two groups: those relating to routine procedures, and those relating to the actual operation of the train in the area where the collision occurred. There is, of course, a relationship between the two; if there had been rigorous compliance with standard procedures, then the grievor might have recognized (although this is merely speculation) that the engineer was, as the material before me shows to have been the case, impaired.

As to the rule violations of the first sort, it does indeed appear that the grievor did not comply with the rules referred to, as is generally acknowledged in his statement. He did not seriously familiarize himself with bulletins or instructions at the bulletin station, and was thus in violation of Rule 83F. He does not appear to have compared time with other members of the crew as required by Rule 3, and was in violation thereof. He did read the train orders, but did not read them aloud, and to this extent was in violation of Rule 210C. He did not make inspection of the train, although it appears that it would have been practicable, as frequently as good practice required, and in this he was in violation of Rule 111.

For the foregoing violations the grievor would be subject to some discipline, although, in the absence of some disciplinary record, no severe discipline would be justified. The mere fact that a collision occurred on the same night as these violations does not make them any more serious; they are, as I have suggested, connected to the collision itself in only the most indirect way.

As to the rule violations of the second sort, it appears from the material before me that, for a considerable distance before the collision, over the zone in question, the speed of the grievor's train exceeded the limits set out in Footnote 5 to Area Operating Time Table 28. The timetable permitted a maximum of 60 m.p.h. for freight trains in that zone, and it appears that at times the grievor's train travelled at as much as 68 m.p.h. There was a speedometer in the cab at which the grievor did not look. The grievor's failure to concern himself with the speed of the train (for which it may be that the engineman would be considered to have the prime responsibility) continued, and was much more serious, when the train moved into an area where medium speed was required. As to the general time table requirement, however, it must be said that the grievor was in violation thereof.

Rule 34 requires train crews to know the indication of train order signals before passing them, and requires members of engine crews, where practicable, "to communicate to each other by its name the indication of each signal affecting the movement of their train or engine". This communication – which certainly appears to have been practicable – was not carried out as between the grievor and the engineman with respect to signal 1900N on the night in question. The grievor saw and called the signal, which he understood correctly to be an approach signal, requiring the train to prepare to stop at the next signal. There was not, however, a satisfactory response to this call, and, as events showed, nothing to satisfy the grievor the signal was obeyed. This sort of verified communication of signals is of obvious importance to safe operation, and it was not carried out in this case. It was a violation of Rule 34. Such a violation is always a serious matter, whether there is later an accident or not.

Rule 285 is that of the approach signal. As the grievor understood, it calls for preparation to stop at the next signal. The grievor stated at his investigation that he did not realize that the rule also required that reduction to medium speed (30 m.p.h.) commence before the signal is passed. The grievor ought to have known of this requirement, the signal-indication rules being clearly of the most vital importance. In any event the requirement of preparation to stop should of itself have been sufficient to alert any trainman to the necessity of some action when a train passes an approach indication at a speed of approximately 60 m.p.h., as was the case here. The grievor says he felt the "tug" of the engine and thought the speed was being reduced. It should not have taken him long to realize that mistake, but he did nothing, not even examining the speedometer. The grievor was, I find, in violation of Rule 285.

The grievor was not charged with violation of Rule 292, the stop signal. His train did in fact pass almost completely by Signal 1876N, which indicated "stop", before colliding head on with an oncoming passenger train, causing the death of both enginemen and a passenger, as well as many other injuries and very great property damage. When the grievor realized the train was not stopping despite the red indication, and when he saw the light of the

approaching engine, he left the cab of the engine and jumped clear of the train just before impact. He is not to be blamed for saving his own life, but it must be noted that he took no step which might have saved the lives of others. He did not attempt to use the emergency brake – although he knew it was there – and he did not shout at the engineman or communicate with him in any way. This may, indeed, be considered a continuation of the very same inaction which had characterized the grievor's conduct of that tour of duty, and which constituted a violation of the rules referred to above.

For the violation of these latter rules, those relating to the operation of the train, it is my view that most severe discipline, and in this case discharge, was justified.

It was argued, as noted earlier, that the grievor was insufficiently trained. He had been an employee for some six months, and had undergone a training course of some 12-1/2 days. He had been on the territory in question on several occasions, a few times in the front end of a train. Lack of familiarity with the particular area involved is not really a very important factor in this case, however. The grievor did see the signal; he simply did not obey it. He ought to have known the speed limit, but did nothing about it. He did not follow the correct practice as to communicating signals, a practice that should be followed in any territory. It may be that had the grievor had longer, more rigorous training he might have behaved differently. But he did have such training as should have brought home to him the necessity of carrying out proper procedures. This he failed to do.

It was also urged that his investigation was unfair. A study of his statements reveals that near the close of the investigation on February 12, 1975, certain leading questions were put to the grievor calling for a rather far-reaching admission of his own wrongdoing. Such questions were really conclusions based on statements the grievor had made early in response to quite proper questions. The investigation generally was not unfair, and the questions I have referred to, with the responses thereto, may be struck from the record without in any way affecting the conclusions to be drawn therefrom.

In the circumstances, it is my view that discharge was justified. The grievance is therefore dismissed.

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