

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 590

Heard at Montreal, Tuesday, February 8 , 1977

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Discipline assessed record of Locomotive Engineer E.R. Sully, August 17, 1975.

JOINT STATEMENT OF ISSUE:

On August 17, 1975, Locomotive Engineer E.R. Sully was engineman on Extra 5166 West, Biggar to Watrous. A radar test of this train indicated that the speed limits were exceeded during the trip.

After conducting an investigation, the record of Locomotive Engineer Sully was assessed ten demerit marks for violation of Uniform Code of Operating Rule 43, paragraph (c), as it pertains to Form V train orders, August 17, 1975.

The Brotherhood requested removal of this discipline. The Company declined the request.

FOR THE EMPLOYEE:

(SGD.) A. J. SPEARE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. T. COOKE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company.

A. J. DelTorto – System Labour Relations Officer, Montreal
R. Birch – System Labour Relations Officer, Montreal
M. A. Cocquyt – System Master Mechanic, Montreal
L. R. Weir – Assistant Superintendent, Saskatoon

And on behalf of the Brotherhood:

A. J. Speare – General Chairman, Edmonton

AWARD OF THE ARBITRATOR

There appears to be no doubt that the grievor did in fact exceed the speed limit on certain trackage by six miles per hour, or about twenty per cent of the limit, at the critical point in a slow area. The limit is not necessarily the desirable speed: it is a maximum, and speed in excess of the limit is a serious matter. Exceeding the speed called for by the train order is a violation of Rule 43 (c) of the Uniform Code of Operating Rules.

The grievor was, admittedly, in violation of this rule. He admitted to a similar violation earlier in the year. In each case there appears to have been a faulty speedometer in the engine. In the instant case at least the grievor knew the speedometer was faulty but did not carry out any of the other procedures available to him for ascertaining his speed. Although, as the Union representative argued at the hearing, it is no doubt a difficult matter to judge speeds, especially in excess of thirty miles per hour, the grievor is not required to guess the speed, but rather to keep it from exceeding thirty miles per hour. Using a speed table, he could have determined his speed with accuracy. Certainly he should have erred on the slow side, if there was any doubt about the matter.

In the circumstances, discipline was properly imposed, and I do not consider that the assessment of ten demerits was excessive. The same penalty had been imposed on an engineer the previous year for a similar offence. The grievor himself acknowledged having committed a similar offence earlier in the year.

It is argued, however, that the Company discriminated against the grievor in that it did not penalize or even investigate other members of the train crew. There could be circumstances in which crew members would be subject to discipline for such violations, and indeed such cases have arisen. Conductors and brakemen do have a responsibility in this regard, but it is not the same responsibility as that of an engineman. Their responsibility may include, in some circumstances, drawing an apparent violation to the attention of the engineman, or even making a brake application, but it does not follow that the train crew are to exercise some sort of constant surveillance over the work of the engineman. The responsibility of the engineman in this case is clear, and the fact situation is clear. There was no need to investigate others. It is possible that there were circumstances which would suggest one of the crew members might be disciplined in some way, but no such circumstances appear on the face of the matter, and it is difficult to see how they could affect the grievor's case. Like cases are to be treated alike, but the grievor's case could not be the same as that of some member of the train crew.

As to the investigation itself it seems to have been handled properly. There is no question as to the facts; the grievor did not want Union representation; and he indicated he was satisfied with the proceedings.

In the circumstances, it is my conclusion that the assessment of ten demerits was proper. The grievance is therefore dismissed.

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