CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 681

Heard at Montreal, Wednesday, October 11th, 1978

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Dismissal of Locomotive Engineer J.E. Hughes for failure to properly control Extra 5571 East prior to passing a signal displaying a "stop" indication, and resulting in damage to dual control switch, and for failure to provide protection for other trains against this unauthorized movement, violation of rules 292 and 517, UCOR, at Leanchoil, B.C., August 17, 1976.

JOINT STATEMENT OF ISSUE:

On August 17, 1976, Engineer J.E. Hughes on Extra 5571 East, allowed his units to pass Eastward Signal 166, displaying a stop indication, governing the movement of eastward trains in the main track at Leanchoil. Further eastward movement resulted in damage to the dual control switch at the east end of the main track at Leanchoil mile 16.6 Mountain Subdivision.

On August 18, 1976 an investigation was conducted and on August 23, 1976 Engineer Hughes was dismissed for violation of rules 292 and 517 UCOR

The Brotherhood appealed the dismissal of Locomotive Engineer J.E. Hughes, requesting that he be reinstated in service as a yard Locomotive Engineer or in some other capacity with the Company.

The Company has declined the Brotherhood's appeal.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) J. R. SIMPSON	(SGD.) J. M. PATTERSON
GENERAL CHAIRMAN	GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

L. J. Masur	– Supervisor Labour Relations, Vancouver
J. Ramage	– Special Representative, Montreal
J. T. Sparrow	– Manager, Labour Relations, Montreal
W. C. Tripp	– Superintendent, Revelstoke Division, Revelstoke

And on behalf of the Brotherhood:

J. R. Simpson	– General Chairman, Calgary
E. J. Davies	– Vice President, Montreal
K. H. Burnett	– General Chairman, Montreal

AWARD OF THE ARBITRATOR

There is no dispute as to the facts. The grievor, an experienced employee of some nineteen years' seniority, passed a signal displaying a "stop" indication, thus violating Rule 292 of the Uniform Code of Operating Rules. It would appear (although it is not in itself one of the grounds relied on) that the grievor did not adequately respond to an "approach" signal, and that he might not have responded to the "stop" signal had he not been alerted by the head-end trainman. As it was, he went through a stop indication, went foul of a siding which an approaching train was to take, and damaged a dual control switch.

Having brought his train to a stop past the signal, the grievor then took certain steps to rectify the situation, advising the front end trainman to call the dispatcher, and making a reverse movement to clear the siding. He did not, however, comply with the protection requirements of Rule 517 of the Uniform Code, which calls for flagging and other protection pursuant to Rule 99.

The grievor was, therefore, in violation of two extremely important rules of the Code. While no great damage was caused in this particular case, the risk of damage caused by failure to observe these rules needs no elaboration.

The grievor had no excuse to offer for this failure which can only be attributed to inadvertence. It may be that the grievor's mind was on certain family problems which he is said to have had at the time. Understandable as those may be, they cannot be allowed to relieve someone in the position of engineman from the requirement of strict compliance with the Uniform Code of Operating Rules, and especially with the rules in question here.

The grievor was, it is clear, subject to discipline, and to severe discipline, having regard to the vital importance of these Rules. There have been cases in which the Company has imposed a substantial number of demerits for an offence of this type, and there have been others where an employee has been discharged but subsequently reinstated after some period of time. The grievor had, with the exception now to be mentioned, a clear record, and would, it seems, be acceptable as an employee in a general way. This grievance is brought pursuant to Article 18(c) Step 2 of the collective agreement, and does not involve a claim for payment for time lost. The possibility of reinstatement of the grievor – perhaps even with a restriction to Yard Service – would, in the normal case, be given serious consideration. In the instant case, however, the grievor was dismissed on July 28, 1974, for an earlier violation of Rule 292 which occurred on July 3 of that year. He was reinstated to engine service on December 1, 1975. The matter of the severity of the penalty imposed on that earlier occasion is not now before me. What is significant is that within eight months of his reinstatement, the grievor committed the same offence, leading to the present case.

In these circumstances it cannot be said that discharge is not justified. The Company had indicated its willingness to hire the grievor in another bargaining unit. That is not a matter over which I have jurisdiction. As to the grievor's reinstatement in engine service, whether restricted to yard work or not, it is my conclusion, for the reasons above set out, that such an award should not be made. The offence involved is obviously a very grave one, and when it is repeated after a relatively short interval of working time, there must be said to be just cause for discharge. Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR