

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 685

Heard at Montreal, Tuesday, November 14, 1978

Concerning

ALGOMA CENTRAL RAILWAY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Discipline assessed Mr. L. Jolin in connection with the derailment in Steelton Yard on October 31st, 1977.

EMPLOYEE'S STATEMENT OF ISSUE:

Mr. L. Jolin was working as a Yard Helper at Steelton Terminal. On October 31st, 1977, an incident occurred during switching operations in Steelton Yard which resulted in assessment of 10 Demerit Marks to Mr. Jolin's record.

The Company in the final step in the grievance procedure reduced the discipline to that of a letter of reprimand, the Union contends that the letter of reprimand or any discipline should not have been assessed to Mr. Jolin, who had no direct responsibility for the incident.

FOR THE EMPLOYEE:

(SGD.) J. SANDIE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

V. E. Hupka – Manager Industrial Relations, Sault Ste. Marie
N. L. Mills – Superintendent Transportation, Sault Ste. Marie

And on behalf of the Brotherhood:

J. Sandie – General Chairman, Sault Ste. Marie

AWARD OF THE ARBITRATOR

The issue is whether the grievor was subject to any discipline in respect of the incident in question. The Union was agreeable to the assessment of ten demerits being reduced to five, and to that penalty being further reduced to that of a letter of reprimand, but it has not been shown that that was agreed to in final settlement of the grievance. In my view, the matter is properly before me for determination.

Discipline was imposed following an incident in Steelton Yard on October 31, 1977, when cars which had been left positioned on Track 6 ran southward through the main track switch, derailing two cars at the derail on the Abitibi Paper Company lead track. The cars had gone through a level crossing, and a very serious accident might have occurred. The issue is whether the grievor bears any degree of responsibility in the matter. The reprimand issued to the grievor asserts that the accident was "the result of car being improperly secured to withstand the additional stress applied when 12 loads were placed on Northend of 32 empty cars already on Track 6." It would seem clear that the cars first placed on Track 6 were, in one way or another, improperly secured. It is difficult to conclude, however, that the grievor bore any measure of responsibility for that situation.

The grievor, an employee of some six years' service, and a qualified Conductor, was working as a Yard Helper in switching operations in Steelton Yard on the day in question. The crew consisted of a Yard Foreman and two Yard Helpers. On the initial move of cars onto Track 6, the grievor was stationed some distance to the north of the movement (the initial movement onto that track would be southbound), and was responsible for the lining of switches for Track 13. Later, he crossed over (past the north end of the cars then on Track 6) and tied down cars on No. 5 Track, having noticed that no hand brake had been set. He then crossed over to No. 7 Track to couple up some bad order cars that had been switched on to that track. He examined the cars then in Track No. 6.

The grievor understood the nature of his work, and knew there was a down grade in that part of the yard. He understood the importance of setting hand brakes in connection with certain moves. On the day in question, he kept a lookout in that respect, and did set the brakes where he considered that needed to be done. He kept an eye on the cars in Track No. 6, but he did not consider that the cars there were inadequately braked.

The overall responsibility for the deployment of the crew and for carrying out the assignment safely is that of the Yard Foreman. When the initial move of cars onto Track No. 6 was made, the grievor was not directly involved. He was never instructed to check or secure brakes on the cars in Track No. 6. Nevertheless, as an employee involved in the operations, he had a responsibility not only to carry out the particular tasks assigned to him, but also to be alert to the overall safety of the operation, even though the primary responsibility for the moves in which he was not involved fell on others. If he had had any substantial reason to think that the cars on No. 6 Track were not secure, then he would certainly have had a responsibility to take proper steps, and in view of the serious implications of such a failure, would be liable to discipline if he did not.

The grievor, however, was alert to his duties, did secure cars when it seemed necessary, and did consider the cars in No. 6 Track. He was not, I find, being careless, and he was not under an absolute liability in case of accident. On the material before me he carried out his duties reasonably, in accordance with his instructions and his overall responsibilities. There was, as I find, no occasion for the imposition of discipline on the grievor in the circumstances of this case.

Accordingly, the grievance is allowed. It is my award that the letter of reprimand be expunged from the grievor's record.

(signed) J. F. W. WEATHERILL
ARBITRATOR