

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 723

Heard at Montreal, Wednesday, October 10, 1979

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Assessment of twenty (20) demerit marks to conductor JP Shave. Request by the Union for removal of discipline.

JOINT STATEMENT OF ISSUE:

On February 22nd, 1979, Mr. Shave was responsible for the switching move which resulted in a derailment to car 16501 and damage to the car and a building. Following an investigation held at Carol Lake on March 1st, 1979, Mr. Shave was found to be in violation of General Rules B, D and 106 of the Uniform Code of Operating Rules and Special Instructions G-16 of the current time table and consequently, assessed twenty (20) demerit marks.

The Union filed a grievance. The Railway rejected same.

FOR THE EMPLOYEE:

(SGD.) L. LAVOIE

GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R.L. BEAULIEU

SUPERINTENDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin	– Counsel, Montreal
S. Deslauniers	– Counsel, Montreal
R. L. Beaulieu	– Superintendent, Labour Relations, Sept-Îles
R. P. Morris	– Superintendent, Labour Relations, Sept-Îles
J-P Morel	– Assistant Labour Relations Officer, Sept-Îles
J. P. Chenier	– Train Dispatcher, Sept-Îles
R. B. Copp	– Chief Clerk, Sept-Îles

And on behalf of the Brotherhood:

D. McLean	– Local Chairman, Labrador City
J. M. St.Pierre	– Local Chairman, Sept-Îles

AWARD OF THE ARBITRATOR

General rules B and D relate to the requirement of knowledge of and responsibility for adherence to the rules. The substantive rule in issue in this case is Rule 106, which sets out the responsibility of the conductor for observance of rules and the safety of his train. The grievor was conductor of the train in question, Extra 257, on the day in question, February 22, 1979. An accident occurred in the course of the grievor's assignment, involving a movement for which the grievor was responsible. The question is whether or not the grievor was subject to discipline in the circumstances.

The mere fact that a mishap occurs during a movement for which an employee is responsible does not require the conclusion that there had been any misconduct on the part of the employee. Whether or not the employee has failed to meet his responsibilities and is subject to discipline on that account is a matter to be determined in the light of all of the circumstances of the particular case.

In the instant case the grievor, as conductor, was responsible for a train manned as well by an engineman and a brakeman. The move in question required the picking up of two cars located roughly one hundred feet from each other, on the CIL spur at Carol Lake Yard. The train, at the beginning of this particular move, consisted of two engines and five cars. The engines were at the south end of the train, and the movement to pick up the two cars was made in a northerly direction. The engines were thus to push the train first to connect to car 16501 and then, in a second move, to connect to car 946, located beside the M2 building, at its northern end.

The first move was made without incident. Car 16501 was picked up. The grievor cut the air in on the car and went to the north end and released the hand brake. It was then in order, if the track was clear, to proceed with the next movement and proceed northward about three car lengths to couple onto car 946. The grievor had inspected the condition of the tracks, there being about four inches of drifted snow over the tracks from car 16501 to car 946. There was no sign of ice.

The grievor gave the signal to move, and the train proceeded very slowly northward. When the train had moved about twenty feet, the grievor saw that car 16501 was coming off the track, and he gave the signal to stop. This was immediately complied with, but there was a very small clearance between the track and the side of the building, and the car ran into the building, causing damage.

There is no evidence as to the cause of the derailment. It might or might not have been due to some condition which the grievor ought to have observed, and because of which he ought not to have given the signal to proceed. There is no evidence of any such condition, and thus no reason for concluding that the grievor acted irresponsibly or contrary to the rules when he gave the signal to proceed.

In these circumstances, the grievor's conduct was not improper, and there was no occasion for the imposition of discipline on him. It has not been shown that he was in breach of any rule. Accordingly, it is my award that the grievance be allowed, and that the demerit marks assessed be removed from the grievor's record.

(signed) J. F. W. WEATHERILL
ARBITRATOR