

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 725

Heard at Montreal, Wednesday, October 10, 1979

Concerning

### QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Three (3) months suspension given to conductor A. O'Brien, brakeman G. Ouellet and engineman J.Y. Thibault.

#### **JOINT STATEMENT OF ISSUE:**

On Thursday, May 3rd 1979, at approximately 03:15 hrs. the train CL 273, extra train 211 North, with the above mentioned crew, pursued its destination from North Eric, on the main track without permission from the competent authority, the whole in violation of General Rules B and E and Rules 104 (B), 106, 264 and 292 of the Uniform Code of Operating Rules.

Following the investigation held on May 7th, 1979 the three (3) members of the crew were suspended for a period of three months. The Union filed a grievance requesting the reinstatement of the conductor with full compensation of the lost time and the reduction of the disciplinary measure in the case of the brakeman and the engineman.

The Railway rejected the grievance.

#### **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:

S. Deslauniers	– Counsel, Montreal
J. Bazin	– 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:

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

## AWARD OF THE ARBITRATOR

There is no doubt that the grievors' train was taken past a stop signal indication without proper authority. Each of the crew members, the engineman, the conductor and the brakeman, was assessed the same penalty, namely a three-month suspension. The issue in each case is whether such discipline was proper.

As for Brakeman Ouellet, his conduct was clearly in violation of the rules. The train had stopped at North Eric where a stop signal was displayed. The engineman had a radio conversation with the dispatcher, who had asked that someone be sent to check the switch. Mr. Ouellet was sent to do that. He did so, and spoke by telephone with the dispatcher. He could find nothing wrong with the switch, and although he had no written authority to do so he signalled to the engineman to proceed even though a stop signal was still showing. As Mr. Ouellet acknowledges, this was certainly an infraction of the rules. The infraction is not the less serious because there was, as it appears, no accident. He was in careless violation of one of the most important and basic rules of train operation, and there is nothing in the material before me which would constitute a sufficient excuse for it. It may be, as the grievor said in the investigation, that "*A trois heures du, matin j'étais dans la lune un peu*", but that certainly does not excuse the violation.

As to the engineman, Mr. Thibault, he had observed Mr. Ouellet's efforts with the switch, and saw that when Mr. Ouellet gave the signal to proceed the signal was still "stop". He did not assure himself that the rules had been complied with, and that a proper move was being made. It was his responsibility in the circumstances to do so. He failed in this, and in my view was, like Mr. Ouellet, subject to discipline. In view of the nature of the engineman's responsibility, I see no reason to impose a different penalty in the two cases.

The case of the conductor, Mr. O'Brien is, it is argued, different because he was in the van some distance from the signal, and was not party to all of the conversation relating to the switch. Some at least of this conversation took place on a channel not available in the van. When the train began to move, the conductor at once called to see whether there was a clear signal or written authorization to proceed had been given. It does not appear to me that there was much else the conductor could do. The others were the ones in a position to see the signal, and who ought to have kept the conductor advised. The conductor's evidence is that he had been trying to call the engine on the channel available to him, but had no answer when the train began to move. In these circumstances, it appears to me that he was doing what he could to carry out his responsibility.

For the foregoing reasons, it is my conclusion that no discipline ought to have been imposed on Mr. O'Brien. The penalty imposed on him is therefore to be set aside, and he is to be compensated for loss of earnings. Messrs. Ouellet and Thibault were subject to discipline, as I have found. The penalty is a severe one, but the offence is extremely serious. The circumstances are different from those which obtained in **Case No. 467**, where a six-month suspension was imposed. I would agree that a lesser penalty was appropriate in this case, but I would not reduce the penalty actually imposed. The grievances of Messrs. Ouellet and Thibault are therefore dismissed.

**(signed) J.F.W. WEATHERILL**  
**ARBITRATOR**