

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 775

Heard at Montreal, Wednesday, September 10, 1980

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Conductor J.E. Romano, Thunder Bay, Ontario, being assessed 15 demerit marks for alleged responsibility in connection with undue delay to Train U-884, Extra 5107 East at Neebling, enroute McKellar Island, 15 December 1979.

EMPLOYEE'S STATEMENT OF ISSUE:

On December 15, 1979 Mr. Romano was assessed 15 demerit marks for alleged responsibility in connection with undue delay to Train U-884, Extra 5107 East at Neebling, enroute McKellar Island.

The Union contended that the demerit marks were not warranted and requested the Company to remove the discipline from his record.

The Company declined the grievance.

FOR THE EMPLOYEE:

(SGD.) L. H. MANCHESTER

GENERAL CHAIRMAN

There appeared on behalf of the Company:

L. R. Weir	– System Labour Relations Officer, Montreal
R. W. Evans	– Superintendent, Thunder Bay
E. Johannesson	– Coordinator Transportation-Special Projects, Montreal
D. W. Coughlin	– Labour Relations Assistant, Winnipeg
H. J. Koberinski	– Labour Relations Assistant, Montreal
M. Proulx	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

L. H. Manchester	– General Chairman, Winnipeg
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AWARD OF THE ARBITRATOR

The facts of the matter are not in dispute. On December 15, 1979, the grievor was in charge of Train U-884, Extra 5107 East, ordered at Atikokan for 1420 with instructions to proceed to Neebing via McKellar Island.

Upon arrival at Neebing at 1910, the grievor and the two trainmen left the property for a meal, as the grievor had previously said he intended to do. They returned between 2145 and 2230. The train departed Neebing at 2320. Subsequently, the train crew took rest after the expiration of eleven hours on duty, and a yard crew had to be called to complete the delivery of the train to McKellar Island. That would not normally have been necessary. In the instant case, there was a very substantial delay in the arrival of the train at its destination.

The delay was attributable, for the most part, to the time taken by the grievor and the train crew for the meal, and to the time taken by the crew, at the grievor's direction, in setting the hand brakes on the train at Neebing before they left for their meal, and in releasing the brakes and performing an air brake test, when they returned. The matter of meal time was not put in issue, but it is the Company's position that the setting and release of the hand brakes, and the conducting of the air brake test were unnecessary procedures, deliberately intended by the grievor (president of the local union and apparently angered at arrangements concerning the handling of unit coal trains to McKellar Island), to delay the train.

A deliberate delay of operations would, as was indicated in **Case No. 199**, justify the imposition of discipline. In the instant case, the Union contends that the setting of the hand brakes and the conduct of the air brake test were safety measures, and referred to various provisions of the Uniform Code of Operating Rules to the effect that safety is a paramount consideration.

There is no doubt as to the importance of safety. In the instant case, however, the action taken by the grievor in setting the hand brakes and calling for the brake test were unnecessary ones. The train was in fact left in the control of the engineman and in such a case, as the grievor well knew, the setting of brakes was not necessary. The train was not left alone. The grievor's view that the engineman was not a member of the "train crew" was purely argumentative. Certainly, for some purposes, the phrase "train crew" would properly be read as referring to the conductor and trainmen and as excluding the engineman. But in other contexts – and this was clearly one of them – it refers to those responsible for the operation of the train, and this includes the engineman. The train, to repeat, was not left alone, and if the grievor felt he was under some sort of obligation to set the brakes when he went for his meal, this can only have been because of his own forced interpretation of the rules. It should be added that reliance of the notion of "safety" as justification for conduct not properly founded on safety considerations is an abuse of the notion and will, in the long run, tend to reduce, rather than increase, the general level of safety in operations.

In the circumstances of this case, therefore, it is my conclusion that the grievor's actions were not required by, nor indeed motivated by considerations of safety, and that they were deliberately intended to delay the Company's operations. That was improper, and the Company was entitled to discipline the grievor on that account. In the circumstances, I do not consider that the assessment of fifteen demerits was excessive. Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR