

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 776

Heard at Montreal, Wednesday, September 10, 1980

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Yard Foreman H.S. Florence personal record been assessed 15 demerit marks for alleged violation of the sixth paragraph of Rule 104 UCOR resulting in derailment.

EMPLOYEE'S STATEMENT OF ISSUE:

Mr. Florence, Yard Foreman, Saskatoon, Saskatchewan was assessed 15 demerit marks for alleged violation of UCOR 6th paragraph of rule 104 resulting in derailment.

The Union, at the joint conference held in Winnipeg, Manitoba on June 2, 1980, requested the removal of the demerits as they were not justified.

The Company declined the Union's request.

FOR THE EMPLOYEE:

(SGD.) L. H. MANCHESTER

GENERAL CHAIRMAN

There appeared on behalf of the Company:

L. R. Weir	– System Labour Relations Officer, Montreal
E. Johannesson	– Coordinator Transportation-Special Projects, Montreal
W. R. Thomas	– Assistant Superintendent, Saskatoon
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

AWARD OF THE ARBITRATOR

There is no dispute as to the facts. On December 18, 1979, the grievor, a Yard Foreman, was in charge of the 16K warehouse yard assignment, Saskatoon Yard. At about 2115, certain cars, being part of a movement which the grievor controlled, were derailed. The grievor had lined switch A-40 for a southward movement and had given a proceed indication. He had failed, however, to ensure that switch H-01 was properly lined for the movement.

Switch H-01 is the switch for the east leg of the wye, and had been left lined for movement onto the wye. The movement controlled by the grievor went over this switch, not lined for it, and derailed.

The sixth paragraph of Rule 104 of the Uniform Code of Operating Rules is as follows:

A train or engine must not foul a track, until switches connected with the movement are properly lined, or in the case of automatic or spring switches the conflicting route is seen or known to be clear.

That rule does, in my view, apply in the instant case. The switches for the movement were not properly lined, and it was the grievor's responsibility to ensure that they were. The movement involved, for the purpose of this provision of the Code at least, a "train or engine fouling the track".

The grievor appears to have walked right by switch H-01 without noticing that it was not properly lined, without noticing either the switch target or the points. He "took it for granted" that it would be properly lined because it was a locked switch. It ought to have been re-lined by a previous user who had lined it for a movement on the east leg of the wye. The employee who failed to re-line the switch was in violation of the rules – and was disciplined therefor - but that does not alter the fact of the grievor's independent responsibility to ensure that the switches connected with his movement are properly lined. This case is analogous in some respects to **Case No. 494** where train crew members simply failed to keep a proper lookout.

In the circumstances, it must be concluded that the grievor was seriously negligent, and failed to comply with Rule 104. I do not consider the assessment of fifteen demerits too severe. A much more severe penalty was upheld in **Case No. 494**. Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR