

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 778

Heard at Montreal, Wednesday, October 15, 1980

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Discipline assessed conductor G. Pardy and brakeman T. Abbott.

JOINT STATEMENT OF ISSUE:

On February 17th, 1980, conductor Pardy and brakeman Abbott, while switching at the Ore Car Shop in "C" Yard at Carol Lake, allowed A.T.O. Unit 501 to derail and hit north end of Ore Car Shop, causing extensive damage to Unit 501 and to Ore Car Shop.

Following investigation held on February 22nd, 1980, conductor Pardy and brakeman Abbott were found in violation of General Rule "B" and Rule 104E of the Uniform Code of Operating Rules and they were both assessed thirty (30) demerit marks.

The Union claims conductor Pardy and brakeman Abbott did not violate General Rule "B" and Rule 104E of the UCOR and consequently the demerit marks should be removed from their record.

The Railway rejected the grievance.

FOR THE EMPLOYEES:

(SGD.) L. LAVOIE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. L. BEAULIEU
MANAGER – LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin	– Counsel, Montreal
R. P. Morris	– Superintendent, Sept-Îles
C. Nobert	– Labour Relations Assistant, Sept-Îles
N. West	– Trainmaster, Labrador City
D. Thomas	– Yardmaster, Labrador City

And on behalf of the Brotherhood:

D. McLean	– Local Chairman, Labrador City
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AWARD OF THE ARBITRATOR

General Rule "B" of the Uniform Code of Operating Rules requires employees to be conversant with and obey the rules and Special instructions. Rule 104E applies in particular to the situation in the instant case, and is as follows:

104E. DERAILS Where derails are provided on other than the main track they must be known to be in proper position before signals are given for movements on tracks so equipped, and except while such tracks are being used the derails must be kept set in derailing position whether or not there are cars on the tracks. Employees must know where such derails are located.

In this case the grievors were to place a unit in the Ore Car Shop for repairs. They could anticipate not only that there would be a derail on the track near the door to the shop, but also that it might well, in conformity with Rule 104E, be set in the derailing position. They were the crew then using the track, and would be the ones entitled to clear the derail, in accordance with the exception set out in Rule 104E.

The movement was made on Track No. 6. Conductor Pardy states that having moved a car off Track No. 6 and left it on Track No. 5, he then walked over to Track No. 6, turned the derail, and then proceeded to the Ore Car Shop and raised the doors so that the unit being repaired could be pushed in. He had instructed Brakeman Abbott to bring the movement in, and Brakeman Abbott gave the signal to proceed. The signal was given by radio.

Brakeman Abbott was, so he states, on the unit being pushed in for repairs. He was on the west side of the unit, corresponding to the side of the track on which the derail was located. The engineman was at the other end of the movement, the engine headed north (the movement into the Ore Car Shop was southerly), and the engineman on the east side of the engine, so that he could not see the derail.

As the movement proceeded the leading unit went over the derail and off the tracks. Brakeman Abbott states that he signalled the engineman to stop, but no signal was received. The movement continued and struck the building. Conductor Pardy gave a stop signal, which was received and the movement stopped promptly. Shortly thereafter a reverse movement was undertaken, pulling the unit back over the derail.

Those in a position to have seen the derailment – Conductor Pardy and Brakeman Abbott (although Conductor Pardy, who was inside the shop, did not observe the actual derailment) – say they do not know how it occurred. The very probably explanation, having regard to the location of the derail and the fact that both trucks went off the track at the same point and that the derail and the ball of the rail show wheel marks (there being no evidence of any other derailment to have marked the track), is that the derail was in fact on as the wheels of the unit went over it, and that the wheels accordingly went up and off the track. There is no other reasonable conclusion.

Given such a conclusion, it follows that Conductor Pardy cannot have removed the derail before going into the Ore Car Shop, or at least that if he did so, he did not do so correctly, and cannot have checked properly to be sure that it was in the off position. It also follows that Brakeman Abbott cannot have checked, as it was his duty to do, to ensure that the derail was off, or at least that if he did so, he did not do so in any but the most cursory manner. In a movement such as this, it is obviously of vital importance for the person at the point of the movement to be scanning the track and the immediate surroundings very attentively.

Brakeman Abbott stated that when the unit derailed, he attempted to contact the engineman, but received no acknowledgment. It was suggested that the radio, which had been operative a moment or two before, had suddenly ceased to function. That is not impossible, but there is nothing in the material before me to establish any defect in the equipment, and no timely suggestion to that effect was made.

The probable conclusion in all the circumstances must be that the grievors did not properly observe the rules referred to, and accordingly discipline was justified. In view of all the circumstances, including the distance the movement travelled after the derailment and the considerable reverse movement over the derail (which could have no proper justification), it is my conclusion that the assessment of thirty demerits was warranted.

For the foregoing reasons the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR