

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 829

Heard at Montreal, Tuesday, April 14, 1981

Concerning

### CANADIAN NATIONAL RAILWAYS

and

### BROTHERHOOD OF LOCOMOTIVE ENGINEERS

#### **DISPUTE:**

Appeal of the discipline assessed G.A. Champion of Prince George, B.C. for causing delay to Train No. 9 at McBride, B.C., February 21, 1980.

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

Train No. 9 arrived at 01:15 on Track No. 2. Locomotive Engineer Champion arrived on Train No. 10 at 01:25 yarding on the main line track. Locomotive Engineer Champion's assignment called for him to take charge of the locomotive on Train No. 9 and handle it to Prince George. At 02:55, Locomotive Engineer Champion took charge of the locomotive on Train No. 9 and departed at 03:15.

Following an investigation, Mr. Champion was assessed twenty demerit marks for his responsibility in connection with the delay to Train No. 9 at McBride on February 21, 1980.

The Brotherhood appealed the discipline assessed on the basis that it was not warranted.

The Company declined the appeal.

#### **FOR THE EMPLOYEES:**

**(SGD.) A. J. BALL**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) S. T. COOKE**  
VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. A. Fellows	– System Labour Relations Officer, Montreal
P. L. Ross	– Coordinator Transportation - Special Projects, Montreal
A. J. DelTorto	– Consultant, Montreal
K. L. Burton	– Labour Relations Assistant, Edmonton
R. Gaudet	– Trainmaster, Prince George

And on behalf of the Brotherhood:

A. J. Ball	– General Chairman, Regina
J. P. Riccucci	– Special Representative, Montreal

## **AWARD OF THE ARBITRATOR**

The grievor arrived at McBride on Train No. 10 at 0125 on February 21, 1980. He was then to change with the engineman of Train No. 9. Train No. 9 had arrived at 0115, and was on track No. 2. The grievor yarded his train on the main line. There was a substantial train of freight cars on track No. 1, between trains 9 and 10. This was unusual, and it made the usual change of crews difficult, since the crews would have either to cross between the freight cars or walk around the freight train.

The crew which had come in on Train No. 9 made the change, as did the engineman, and departed on Train No. 10 (which had come in at 0125), at 0150 hours. The crew of the grievor's train stopped the train on the main track opposite the station, registered the train, and then crossed through the freight cars on track No. 1 and took charge of Train No. 9, which was waiting on track No. 2. The grievor remained in the station. It was not until a freight crew, which was on rest, was called in to split the cars of the freight train that the grievor then went across track No. 1 to his train, which left at 0315, one hour and thirty-five minutes late. It may be noted that it was a passenger train.

The grievor acknowledged that the delay to his train was due to his own refusal to cross through the freight cars or to walk around the freight train. He stated that it was unnecessary and unsafe to do so, and that he was being discriminated against. At the hearing of this matter, the Union advanced certain arguments relating to safety, and also alleged that the Dispatcher had been in violation of Article 4.1 of the Collective Agreement by putting a freight train in track No. 1, which was "the change-off point and designated track for No. 9".

Article 4.1 is as follows:

**4.1** Locomotive engineers will report for duty 15 minutes prior to departure from the shop track or station or change-off point or designated track, or prior to the commencement of work train service.

That Article has no application to the present case. The grievor was on duty and had no doubt complied with that provision when his tour began. The "change-off point" in question would appear to have been McBride, and there is nothing to suggest an agreement between the parties guaranteeing to enginemen that their trains will always be on a particular track, or that they will never have to cross a track to get to them. This argument is quite without merit.

As to the matter of safety, it is certainly true that safety must be maintained when crossing between cars standing on a track. It is not, however, necessarily unsafe to cross between cars standing on a track and railroaders do it all the time. Procedures for crossing between cars have been studied, and hazards to avoid have been pointed out in safety booklets issued by the Company. On the occasion in question, there were no particular circumstances which could have justified the grievor's refusal to cross between the cars. In any event, nothing prevented him from walking around the freight train, although even that would have involved an unnecessary delay. As to the grievor's being the victim of discrimination, there is simply no evidence whatever to show that this was the case. The grievor apparently had wanted to yard his train at another point on the track. No one else did, it seems. Such a situation cannot properly be called discrimination.

In the circumstances, it is clear that the grievor deliberately delayed his train, apparently out of simple obstinacy, but certainly for no proper reason. He was subject to discipline on that account, and I do not consider that twenty demerits was excessive. Accordingly, the grievance is dismissed.

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