

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 862

Heard at Montreal, Thursday, September 10, 1981

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Dismissal of Locomotive Engineer K.W. Sorensen, Revelstoke, British Columbia, for accumulation of demerit marks assessed for his responsibility in delaying certain trains between September 15, 1980 and October 17, 1980.

JOINT STATEMENT OF ISSUE:

Locomotive Engineer K.W. Sorensen was removed from service October 29, 1980 for investigation of seven trips made by him between September 15, 1980 and October 17, 1980, during which trains were delayed to take meals. The investigation commenced on November 25, 1980 and concluded on December 6, 1980. On December 22, 1980, Mr. Sorensen's record was debited with 100 demerit marks for responsibility in delaying trains #404 – September 15, 1980, #821 September 16, 1980, #404 – September 22, 1980, #68 – October 1, 1980 and #651 – October 17, 1980, to take meals, in violation of the Memorandum of Understanding dated September 13, 1980, clarifying the intent of Article 24 of the Collective Agreement between the Brotherhood of Locomotive Engineers and CP Rail. He was subsequently notified of his dismissal on December 22, 1980 for accumulation of demerit marks.

The Union appealed the discipline assessed Locomotive Engineer Sorensen requesting the removal of the demerit marks, reinstatement to service as a Locomotive Engineer, and payment for all time lost on the grounds that Locomotive Engineer Sorensen was not in violation of the Memorandum of Understanding dated September 13, 1980, and was exercising his rights to eat within the meaning and intent of the Memorandum, and Article 24 of the current Collective Agreement between the Brotherhood of Locomotive Engineers and CP Rail.

The Company declined the Union's appeal contending that the discipline assessed Locomotive Engineer Sorensen was proper and justified.

FOR THE EMPLOYEES:

(SGD.) L. F. BERINI
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) L. A. HILL
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

R. Colosimo – Vice-President, Industrial Relations, Montreal
J. D. Bromley – Vice-President, Operations & Maintenance, Vancouver
J. M. White – Superintendent, Revelstoke
P. E. Timpson – Labour Relations Officer, Montreal
L. J. Masur – Supervisor, Labour Relations, Vancouver

And on behalf of the Brotherhood:

L. F. Berini – General Chairman, Calgary

K. H. Burnett
J. Delano

– General Chairman, Montreal
– Local Chairman, Revelstoke

AWARD OF THE ARBITRATOR

The issue in this case is whether or not the grievor did improperly delay trains on the five occasions referred to and if so, whether or not the discipline assessed was proper.

There is no doubt that on each of the five occasions referred to the grievor did delay his train in order to have a meal. On September 15, 1980, the grievor went on duty at Revelstoke at 1400 for train no. 404, which departed at 1620, en route to Field. The train reached Moberley at 2310. The grievor had been on duty for nine hours and ten minutes. The crew then taxied to Golden to eat and a crew change was effected. Had it not been for the delay involved in the stopping of the train at Moberley while the crew were taken by taxi to Golden, apparently to have a meal in a restaurant, the trip to Field could have been completed by that crew.

On September 16 the grievor was called at Field at 0730 to taxi to Golden, where he arrived at 0810. His train was ready for departure at approximately 1100. The train did not leave at that time, however, because the grievor left to eat from 1100 to 1200.

On September 22 the grievor was called at Revelstoke at 1200, and departed at 1310 for Field. After stops at three points for brake tests or other work involving the brakes, after spending fifty minutes at Beavermouth where two bad order cars were set out, and after waiting thirty minutes at Moberley for a meet, the train arrived at Golden at 1955. It could have proceeded on to arrive at its destination by approximately 2130. Instead, the crew took time to eat at Golden, and was subsequently changed off with the result that the train did not depart Golden until 2335. While there may have been an additional reason for the protracted delay (attributable to the conductor), there is no doubt that the grievor's taking a meal was one reason for the substantial delay.

On October 1 the grievor was called at Revelstoke at 0905. His train departed at 1205, en route to Field. It was delayed at Redgrave from 1605 to 1720, account a leaking train line, and again at Moberley from 1755 to 1830, awaiting a meet. At 1840 the train arrived at Golden. The crew ate and changed off. It took some time to yard the train. Had it not been for the meal delay, the crew could have proceeded to Field.

On October 17, 1980 the grievor was called at Field at 0815, to taxi to Golden, where he arrived at 0905. His train could have left at 1150, but the grievor left for a meal at 1145, returning at 1245. As a result of intervening train movements, the grievor's train could not then leave until some two hours later. The grievor's taking time to eat had the effect of delaying the train considerably.

On each of the five occasions described, the grievor delayed his train in order to have a meal. It is acknowledged, of course, that employees are entitled to eat. Obviously, it would have been necessary for the grievor and members of the train crew to eat during the course of the five trips above described. Employees could not be expected to pass periods of several hours, sometimes nine hours or more, without having something to eat. The company has not suggested that employees should go without food in such circumstances. The company does, however, contend that at least in the five cases described, the grievor could have taken a meal at an appropriate point without having delayed his train. That is, on the facts, clearly correct. There was ample opportunity in each case for the grievor to have eaten at a time when his train was delayed for some other reason, and when he himself would be free to eat.

Thus, while the requirements of work and the requirements of the human constitution may sometimes conflict to the extent that it is necessary to delay a train in order to eat, such circumstances should, in the ordinary course of events, be rare. They did not occur in the five situations described above. There was, as I find, time and opportunity for the grievor to have a meal at an appropriate point in each of those cases. It was neither reasonable nor necessary for him to delay those trains as he did. Delay of train operations for improper reasons is a serious offence, and the grievor was quite properly disciplined on that account.

It may be noted that on the occasions in question the delay to the trains was contrary to a memorandum of understanding which had been signed between the parties on September 13, 1980. That memorandum elaborated the intent of article 24 of the collective agreement. It was intended, as the grievor well knew, to bring an end to a situation which had existed for some months in which employees had (as was determined by the **Canada Labour Relations Board** in proceedings before it), engaged in an illegal strike, or a series of illegal strikes, among the

incidents of which had been the delaying of trains in circumstances similar to those involved in the cases described above. The grievor had participated in, and had been a leader of such strikes, and was a key figure in what appears to have been an attempt to alter wages and working conditions during the term of the collective agreement. Although the grievor appeared sincere and well-intentioned at the hearing of this matter, it must be said that his participation in and leadership of such activities was both legally and morally wrong.

Article 24 of the collective agreement is as follows:

24 Engineer on freight train will be given reasonable time for meals between terminals on advising dispatcher 1 hour in advance. Time occupied not to be deducted in computing overtime or arbitrables unless such overtime or arbitrables have been increased by engineer delaying his train in taking time to eat.

Clearly, employees are entitled to eat while en route. They are entitled to a reasonable time to eat, and their taking such time will not affect their compensation, provided they do not delay their trains by taking time to eat. That article would appear clear enough, but the memorandum of agreement of September 13, 1980, may be even clearer. It is as follows:

IT IS AGREED THAT:

The intent of Article 23 (g) of the Collective Agreement governing Conductors and Trainmen, and Article 24 of the Collective Agreement governing Locomotive Engineers, is that in all reasonable circumstances, train and engine crews are expected to come to work prepared to move their trains through to destination without delaying trains to take meals.

In other circumstances, it may be necessary at Golden to take meals in restaurant facilities, transportation will be supplied by the Company for this purpose when city restaurants are closed.

Similarly at Rogers, in other than reasonable circumstances may eat in resthouse at normal meal hours or obtain food in resthouse during periods other than normal meal hours, when food is available.

In the cases described above, the grievor does not appear to have come to work prepared to move his train through to its destination. Although there were reasonable opportunities on each occasion for a meal to be eaten en route, the grievor either neglected to bring a meal (there is no evidence as to what arrangements he may have made), or preferred to go out to a restaurant. Now while it is contemplated, naturally, that employees will eat, it is not contemplated that they will, as a general rule, go out to eat in a restaurant. That is scarcely what one would expect in the case of train crews operating in Canada, and it is not provided for in the collective agreement. Taking a meal in a restaurant is, as the second paragraph of the memorandum makes clear, an exceptional matter. Such exceptional circumstances did not arise in the cases involved here.

The grievor was, as I have noted, subject to discipline for having caused unjustified delay to his train in each of the cases involved. He had been disciplined on that ground before, but that discipline had been removed at the time the memorandum was signed, in order to resolve the situation which existed at that time. It was expected that, as a result, operations would return to normal, but the grievor did not keep his part of the bargain. He continued to delay trains, and he apparently gave no heed to the provisions of the collective agreement or the memorandum. The penalty of twenty demerits imposed in each of these separate and distinct instances was not excessive. The grievor having been a leader of these illegal activities, it was in no sense an improper discrimination that the Company may have imposed a lesser penalty on employees who were not so active.

The discipline in the instant case was imposed on the grievor for just cause, and his consequent discharge for accumulation of demerits was justified. The grievance is accordingly dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR