

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 864

Heard at Montreal, Thursday, September 10, 1981

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

Removal of the 20 demerit marks assessed Conductor D. Pearson Revelstoke, for his failure to properly inspect a passing train after being reminded of that responsibility by a Company Officer October 31, 1980.

JOINT STATEMENT OF ISSUE:

An investigation was held at Revelstoke on November 10, 1980 in connection with the tour of duty of Conductor Pearson on Work Extra 5849 at Glacier, B.C. October 31, 1980. Following the investigation, Conductor Pearson was issued a Form 104 dated November 26, 1980, stating as follows:

Please be informed that your record has been debited with TWENTY (20) demerit marks for failure to take a position to properly inspect a passing train after being reminded of that responsibility by a Company Officer, a violation of Rule 111, Para. 1 of UCOR, Glacier, B.C. October 31, 1980.

The Union appealed the discipline assessed Conductor Pearson requesting the removal of the 20 demerit marks contending the Company did not establish any responsibility in respect to the charges against him. The Union further contends the Company violated Article 32, Clauses (c) and (d) of the Collective Agreement.

The Company declined the appeal on the basis that discipline was assessed upon the evidence produced.

FOR THE EMPLOYEES:

(SGD.) P. P. BURKE
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

L. J. Masur – Supervisor, Labour Relations, Vancouver
J. M. White – Superintendent, Revelstoke
P. E. Timpson – Labour Relations Officer, Montreal

And on behalf of the Union:

P. P. Burke – General Chairman, Calgary
R. T. O'Brien – Vice-President, Ottawa
J. H. McLeod – Vice-General Chairman, Medicine Hat
W. J. Cyronek – Local Chairman, Revelstoke

AWARD OF THE ARBITRATOR

Article 111 of the Uniform Code of Operating Rules is as follows:

111 When other duties will permit, employees in the vicinity of passing trains must observe the condition of equipment in such trains; trainman at rear of moving trains will be in position, on rear platform where provided, and trainmen of standing trains in best possible position on the ground from which a view of both sides of passing trains can be obtained. If a dangerous condition is apparent every effort must be made to stop the train.

The evidence in this case is only that of the grievor himself, who denied any offence. At the hearing, the grievor was presented with the memorandum of Mr. Pecora, the Road Foreman/Trainmaster, Mr. Pecora being present at the hearing. That memorandum was properly used as a basis for questions put to the grievor, and I find no violation of article 32 (c) of the collective agreement, but the result is that there is simply an affirmative and denial of a rule violation, and the material before me does not permit a proper finding of fact.

It does appear that the grievor took a rather casual view of his responsibility under the rule in question, but it seems also to be the case that there were a number of employees in a position to observe the train which passed at the time in question, and who were not disciplined.

In my view, just cause for discipline has not been established in this case, and the grievance is therefore allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR