

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 880

Heard at Montreal, Thursday, October 15, 1981

Concerning

CANADIAN PACIFIC LIMITED

and

RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Train Dispatcher R.T. Salonen, Revelstoke, B.C., was assessed 30 demerit marks for failing to have clearance destroyed and arrange for delivery of Form Y, Example 2, Train Order No. 505 to train No. 2 at Kamloops resulting in train No. 2 encountering the work limits and not in possession of the order, then in effect, a violation of UCOR, Rule 211A, July 29, 1980.

JOINT STATEMENT OF ISSUE:

The Brotherhood appealed the discipline on the basis that it was unfair and unjust and requested removal of the discipline.

The Company contends that, on the evidence adduced at the investigation, the discipline is considered justified for violations of such a serious nature and refused to remove the discipline.

FOR THE EMPLOYEES:

(SGD.) D. C. DUQUETTE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) L. A. HILL
GENERAL MANAGER, OPERATION & MAINTENANCE, CP RAIL

There appeared on behalf of the Company:

L. J. Masur	– Supervisor Labour Relations, Vancouver
M. D. Morrow	– Assistant Superintendent of Transportation, Vancouver
J. C. Gaw	– Manager, Rules Training & Time Service, Montreal
L. G. Marlin	– Special Duties, Rules & Training, Montreal
I. J. Waddell	– Labour Relations Officer, Montreal

And on behalf of the Employees:

E. J. Yerex	– National Chairman,	– Winnipeg
D. H. Arnold	– CP System Chairman,	Calgary

AWARD OF THE ARBITRATOR

On the day in question, the grievor was on duty from 1600 to 2359. At approximately 1637 Track Maintenance Foreman Williamson requested train order protection for work which his men would be performing on the following day, between 0800 and 1500, on certain trackage under the grievor's control. The work location was a 236-foot-long bridge at mileage 18.5 on the Shuswap Subdivision. The grievor repeated the request, and advised the Foreman that "he could consider it done".

Subsequently, at 2037, the grievor issued a train order directed to eastward trains at Kamloops, requiring them to approach the point in question, during the times in question, prepared to stop and not to pass certain signal limits without the instructions of the Foreman. That, so far as it went, would appear to have been correct, but it was not enough. In fact, an eastward train left Kamloops at 0500 on the following day (the day for which protection was requested), and at 0850 passed at unrestricted speed a yellow flag indicating the work crew was ahead. Fortunately, that flag was observed by the headend crew, and the train was stopped in time to avert what might well have been a disaster.

The issue is whether or not the grievor bore a major responsibility for the eastward train's departing Kamloops without the train order in question. At the time that train left, of course, the grievor was off duty. The grievor had, while on duty, issued a clearance to the train at 2002, with certain train orders. The orders did not include the order in question, which had not yet been issued. It had been requested at 1637, but was issued at 2037. The train in question should, in the normal course, have cleared the restricted area before the restriction came into effect. The grievor, however, was not entitled to presume that events would follow the "normal course", but was required to follow the procedures set out in the Uniform Code of Operating Rules. In fact, the train in question was delayed, and entered the restricted area during the restricted time, as has been noted.

It was, clearly, necessary for the grievor to issue the order in question (order No. 505), to the train in question (No. 2), even although the train had already been cleared. It was necessary, pursuant to Rule 211A of the Uniform Code, to require that the previous clearance be destroyed and to receive notification that it had been destroyed. The grievor did not follow that procedure. As a result, Train No. 2's clearance stood, and it did not receive train order 505. Indeed, the clearance, although issued at 2002, was in fact delivered to No. 2's crew at 0300 the following day, because of the delay to the train. Had the grievor followed the proper procedure, that clearance, as it stood, would have been destroyed, and the crew would have received another clearance, along with the necessary train order. The time for requiring this procedure occurred during the grievor's shift.

Whether or not there was a subsequent error committed by the dispatcher who relieved the grievor, it is clear that the grievor created a situation of extreme danger by not following the correct procedure. When the grievor made his transfer to the relieving dispatcher, the movement of trains in the area in question was not secured, because the clearance issued to train No. 2 had not been retrieved, and there was, I find, a violation of the Uniform Code.

While the penalty imposed is a heavy one, the matter is of such fundamental importance that the penalty was, in my view, justified. There was, I find, just cause for the discipline imposed in this case. The grievance is therefore dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR