

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 884

Heard at Montreal, Tuesday, November 10, 1981

Concerning

### CANADIAN NATIONAL RAILWAYS

and

### BROTHERHOOD OF LOCOMOTIVE ENGINEERS

#### **DISPUTE:**

Discipline assessed record of Locomotive Engineer J. Kornichuk of Thunder Bay, Ontario, October 29, 1980.

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

On October 29, 1980, Locomotive Engineer J. Kornichuk operated engine on freight train Extra 5196 West, Neebing to Atikokan, Ontario. At Anita and again at Garda, he was heard calling signals.

Following an investigation, the record of Locomotive Engineer J. Kornichuk was assessed with ten demerit marks for violation of Item 3.2 (b), CN Form 696, General Operating Instructions on October 29, 1980 and requested to attend special rule instructions on Rule 34, UCOR. and Item 3.2 (b), CN Form 696, General Operating Instructions.

The Brotherhood appealed the discipline on the grounds that Locomotive Engineer J. Kornichuk did not violate Item 3.2 (b), CN Form 696, General Operating Instructions. The Company declined the appeal.

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

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

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

**(SGD.) C. E. MORGAN**  
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

J. A. Fellows – Manager, Labour Relations, Montreal  
P. L. Ross – Coordinator Transportation – Special Projects, Montreal  
B. Rupert – Manager of Rules, Montreal

And on behalf of the Brotherhood:

A. J. Ball – General Chairman, Regina

## AWARD OF THE ARBITRATOR

Item 3.2 (b) of CN Form 696 is as follows:

On trains not equipped with communicating signal appliance, a member of the crew at the rear end of the train must contact a member of the crew on the engine who must communicate by name the indication displayed by the following block and interlocking signals:

...

(2) In single track CTC, and on subdivisions or portions thereof specified in the timetable or special instructions, approaching the approach signal to all controlled locations.

If crew on engine fails to respond to such calls, action must be taken by a member of the crew at the rear of the train to stop the train immediately.

Reference may also be made to Rule 34 of the Uniform Code of Operating Rules, which is as follows:

**34** Crews on engines and snow plow foreman must know the indication of fixed signals (including switches where practicable) and members of train crews must know the indication of train order signals affecting their train before passing them. All members of engine and train crews must, when practicable, communicate to each other by its name the indication of each signal affecting the movement of their train or engine.

In the instant case the grievor, being the engineman and at the head of the train, did call, by radio, certain signal indications which, by item 3.2 (b) of Form 696, should have been called by the rear end crew. What the grievor did was more than simple compliance with Rule 34. Whether by means of proper radio procedure or not, he did in fact "initiate" the calls required by Item 3.2 (b) of the General Instructions.

In my view, the procedure followed by the grievor was incorrect and unsafe. It would appear that it was, as well, contrary to express instructions given him by Company Officers. On these grounds, and in particular on the latter ground, the grievor would have been subject to discipline. It was not, however, on such grounds that the grievor was charged and disciplined. Rather, he was charged with violation of Item 3.2 of the General Instructions.

As to the specific offence with which the grievor was charged, it is my view that the grievor was not in violation of Item 3.2, which is addressed to members of the crew at the rear end of the train. In the instant case, the members of the rear end crew did not contact the engine crew to request the necessary signal indications. Such a failure would not, of course, affect the engineman's duty to observe the signal indications, and to call them, pursuant to Rule 34. It would, as well, give rise to an obligation to contact the rear end crew to determine if something were amiss. It was not the engineman's role to do the work of the rear end crew, but his calling of the signals in question was not inconsistent with the procedures required.

What the grievor did was not in violation of Item 3.2, and it follows that there was not just cause for the imposition of discipline under that head. That the grievor would have been subject to discipline on other grounds, is another matter.

For the foregoing reasons, the grievance is allowed.

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