

# **CANADIAN RAILWAY OFFICE OF ARBITRATION**

## **CASE NO. 897**

Heard at Montreal, Tuesday, December 8, 1981

Concerning

**CANADIAN PACIFIC LIMITED**

and

**UNITED TRANSPORTATION UNION**

### **DISPUTE:**

Discipline of thirty (30) demerit marks to Conductor D. Genereux, Montreal Division, CP Rail, relating to an incident at Mileage 12.05 Park Avenue Subdivision on October 22, 1980.

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

Conductor D. Genereux was assessed 30 demerit marks for violation of Rule 12, UCOR, at St. Martin Jct., on October 22, 1980, when the boom of Burro Crane 1503-08, struck passing Train No. 162. Conductor Genereux was held out of service for investigation into this matter.

The Union contends Conductor Genereux is not in violation of Rule 12, UCOR and is requesting the removal of 30 demerit marks and payment for all time lost.

The Company declined the Union's request contending that Conductor Genereux was properly disciplined in these circumstances.

### **FOR THE EMPLOYEE:**

**(SGD.) L. H. BREEN**  
GENERAL CHAIRMAN

### **FOR THE COMPANY:**

**(SGD.) J. B. CHABOT**  
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

B. A. Demers – Supervisor, Labour Relations, Montreal  
B. P. Scott – Labour Relations Officer, Montreal

And on behalf of the Employee:

B. Marcolini – General Chairman, Toronto  
J. H. Sandie – Vice-President, Sault Ste. Marie

## AWARD OF THE ARBITRATOR

Rule 12 of the Uniform Code of Operating Rules is, in part, as follows:

**12** Signals must be given from a point where they can be plainly seen and in such a manner that they cannot be misunderstood. If there is doubt as to the meaning of a signal, or for whom it is intended, it must be regarded as a stop signal.

In the instant case the grievor, being in charge of the operation of a Burro Crane, gave a signal which led the crane operator to move the boom and bucket foul of the main track just as a passenger train, travelling at speed, approached. There was a collision causing very substantial damage although there were fortunately no serious personal injuries.

The signal was given in the course of a series of movements intended to switch the Burro Crane to the south end of two gondola cars. The gondola cars had been pushed onto the southward track to a point from which it was hoped they would roll northward, clear of the switch to the adjoining scale track, on which the Burro Crane was placed. The Burro Crane could then switch on to the southward track, south of the gondolas.

The movements made, however, were not completed as planned. The gondolas did not roll far enough north, and were foul of the switch. It was therefore the grievor's revised plan to use the boom and bucket of another crane to push the gondolas forward to clear the switch. In order to bring the other crane into position, it would be necessary to move the grievor's crane northward, to make room for it. The grievor therefore gave a proceed signal to the crane operator. At the same time, however, he made certain other hand motions, intended to explain what it was that he proposed to do. The crane operator, considering that these gestures (which resembled signals used for crane operation) were directions to move the boom and bucket, did so – into the path of the oncoming train.

The crane operator, although he did not realize it, mistook the signal given by the grievor. It is possible, no doubt, that even a signal which "cannot be misunderstood" can be misunderstood. If the grievor had given a proceed signal and nothing more, and if the crane operator nevertheless swung the boom over the main track, I think the grievor could not be held responsible. Here, however, the grievor not only gave a proper signal but added to it various "explanatory" gestures which the crane operator (observing them, it would seem, in a rear-view mirror) certainly misread. The grievor ought not to have made these "explanatory" signals. The planned move had not been successfully completed, and different equipment was to be used. Swinging booms across several tracks has obvious hazards, especially where it is known that a superior train is approaching. The grievor ought to have discussed the move with the crane operator, and ought not to have made the signals he did, which were certainly subject to being misunderstood, as the grievor ought to have realized.

In these circumstances, it is my view that the grievor was properly subject to discipline. The matter is obviously a very serious one, and in my view the penalty imposed ought not to be interfered with. Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL  
ARBITRATOR