

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 982

Heard at Montreal, Wednesday, September 15th, 1982

Concerning

CANADIAN PACIFIC LIMITED

And

RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Discipline of fifteen demerit marks (reduced to caution) assessed Train Dispatcher R.T. Salonen for failure to issue a Track Occupancy Permit (T.O.P.) between Golden, B.C. and Glenogle, B.C. on July 14, 1981.

JOINT STATEMENT OF ISSUE:

On July 14, 1981, Dispatcher R.T. Salonen was requested to issue a T.O.P. within the same mileage limits as an existing permit. He failed to comply resulting in a delay to the work scheduled under the requested T.O.P.

The Union contends:

That Mr. Salonen delayed issuance of the requested T.O.P. in order to ascertain the status of work occurring under the existing permit. that Item 5.10 of Form 3815 implies that the issuance of a second T.O.P. within an existing permit's mileage limits is left to the Dispatcher's discretion.

That Mr. Salonen was exercising reasonable caution, attempted to proceed in a safe manner and that the discipline assessed should be removed.

The Company contends that discipline assessed Mr. Salonen's record was warranted and has denied the request.

FOR THE UNION:

(SGD.) D. H. ARNOLD
SYSTEM CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

I. J. Waddell – Labour Relations Officer, Montreal
F. R. Shreenan – Assistant Supervisor, Labour Relations, Montreal
J. C. Gaw – Manager Rules, Training & Time Service, Montreal

And on behalf of the Union:

D. H. Arnold – System Chairman, Winnipeg

AWARD OF THE ARBITRATOR

On the day in question the grievor, an experienced Dispatcher, was on duty from 0001 to 0800. At approximately 0729 a B&B Foreman contacted him requesting a Track Occupancy Permit which would allow him to operate certain equipment on certain limited mileage and for a certain limited time on the Mountain Subdivision. The grievor delayed issuing the permit, in order to ascertain the status of another crew, to whom an overlapping permit had been issued.

While this might at first appear to have been a safety measure, in fact it was not. The regulations governing the matter specify that more than one Track Occupancy Permit may be issued in respect of the same or overlapping limits or times. The permit does not protect track units one from the other.

While more than one permit "may" be issued, the regulation does not require that additional permits must be issued. There may be circumstances which the Dispatcher would not issue a second permit, for example, in order to accommodate expected train movements. Further, there are cases where a second permit must not be issued, as where joint authority (under which a train is moved within the protected limited is issued. Here, however, no such reason existed. It was quite proper to issue a second permit, and while it would be proper for the Dispatcher to review the situation, it was not necessary for him to contact the other crew, nor to wait for an expected call from the other Foreman.

It is understandable that the grievor, who had a bad discipline record, sought to proceed very cautiously. In this case, however, it was not so much a matter of caution as of unjustified delay. It was not the Dispatcher's responsibility to protect track units from each other.

The grievor's procedure was incorrect, and it resulted in delay and loss of productivity. He was, in the circumstances, subject to discipline. For a first offence of this sort (whatever his record in other respects), it would be my view that a caution or warning would be appropriate. It appears that in the instant case a penalty of fifteen demerits was assessed. Quite apart from the result that would have had (given the grievor's record) with respect to his employment, it would be my view that such a penalty would have been excessive, in the circumstances of this case. In fact, however, the penalty was reduced to that of a caution. There was, as I have indicated, just cause for that. Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR