

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1032

Heard at Montreal, Tuesday, January 11, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of dismissal of Conductor R. J. Skilton, Toronto, Ontario December 21, 1981.

JOINT STATEMENT OF ISSUE:

On December 21, 1981, Mr. R. J. Skilton was the Conductor on VIA Train No. 670 operating from London to Toronto. This train operated on the Thorndale Subdivision from Thorndale, at Mileage 22.3 to St. Marys West, at Mileage 11.5 on the time of a superior train, No. 667.

Following an investigation, Conductor R. J. Skilton was dismissed from Company service for violation of Rule 87 of the Uniform Code of Operating Rules.

The Union appealed the discipline as being too severe and, accordingly, that the resultant discharge was unjustified.

The Company declined the appeal.

FOR THE EMPLOYEES:

(SGD.) R. A. BENNETT
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) G. E. MORGAN
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

H. J. Koberinski	– Manager Labour Relations, Montreal
M. Delgreco	– Senior Manager Labour Relations, Montreal
W. H. McLeish	– Manager Labour Relations, Toronto
J. A. Sebesta	– Coordinator, Transportation Special Projects, Montreal
W. J. Rupert	– System Manager – Rules, Montreal

And on behalf of the Union:

R. A. Bennett	– General Chairman, Toronto
J. M. Hone	– Vice General Chairman, Toronto
T. G. Hodges	– Secretary, Toronto
R. J. Skilton	– Grievor

AWARD OF THE ARBITRATOR

Rule 87 of the U.C.O.R. is as follows:

87. (SINGLE TRACK) An inferior train must keep out of the way of and clear opposing superior trains by not less than five minutes. An inferior train failing to clear the main track by the time required must be protected as prescribed by the rules.

Extra trains will be governed by train orders with respect to opposing extra trains. At meeting points between extra trains the train in the inferior time table direction must take the siding unless otherwise provided.

Trains required to take the siding at train order meeting points must pull in when practicable; if necessary to back in the train must be protected as prescribed by the rules.

In the instant case the train orders governing the operation of the grievor were changed, so that the grievor's train was inferior to, rather than superior to an opposing train on the same track. The grievor did not properly determine the point at which his train would have to wait for the opposing train to clear, nor ensure that it did so. As a result, his train operated for several miles on single track mileage, during the time of the opposing train.

There is no doubt that there was a violation of Rule 87, and that the grievor bears responsibility for such violation, whatever the responsibility of others may be. Such an offence is extremely serious, and there can be no doubt that very substantial discipline was justified. The investigation conducted was, in my view, a proper one (the facts are not in dispute in any important respect), and the only issue is as to the severity of the penalty.

In many circumstances I should think that discharge would be an appropriate penalty for violation of Rule 87. In the circumstances of this case, however, I am of the view that the penalty assessed was excessive.

The grievor is an employee of some nineteen years' service, and his record has been clear for many years. On the night in question, he was aware of the change in train orders, and appears to have followed the correct procedure with respect to them. It appears that neither the Dispatcher nor the Operator followed the requirements of the Rules respecting changed train orders. Certainly the significance of the change in terms of the operation of the grievor's train (which was delayed) was not pointed out to him.

The grievor did, nevertheless, understand the train orders, and he did grasp their significance. Thus, when the engineer did not wait for the meet at London Junction, the grievor went forward to speak to him about it. The engineer appears to have persuaded the grievor that it was still proper for the meet to occur at St. Mary's West. In fact, if the opposing train had left there on time, the probability of a head-on collision was high.

Just east of Kellys, the grievor went forward to enquire as to the location of the opposing train. When the engineman "said something about things didn't seem just right", the grievor, at once called to the opposing train and was assured that it was waiting at St. Mary's West. The grievor's train then proceeded to St. Mary's West and entered the siding, the switch being lined for it.

The grievor did report the matter (which could scarcely have been effectively covered up), and was perfectly frank as to his own thoughts and actions. Although the grievor ought to have acted on his initial, and correct, understanding of the train orders, his failure to do so was in part attributable to the failure of the dispatcher and the engineman to communicate and understand them. In all of the circumstances, it is my view that the penalty of discharge was excessive, although there can be no doubt that severe discipline was justified.

Having regard to all of the circumstances, it is my award that the penalty of discharge be set aside, and the grievor reinstated in employment forthwith, without loss of seniority, subject to the following: 1) there shall be no compensation for loss of earnings or other benefits and 2) the grievor may be employed in some other classification for which he is qualified, until such time as he shall pass such standard tests as the Company normally requires for persons to qualify as Conductors.

(signed) J. F. W. WEATHERILL
ARBITRATOR