

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1038

Heard at Montreal, Tuesday, February 8th, 1983

Concerning

CANADIAN PACIFIC LIMITED

and

RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Discipline assessed Train Dispatcher H. Wisinger.

JOINT STATEMENT OF ISSUE:

On April 29, 1982, Train Dispatcher H. Wisinger issued an M.B.S. clearance to a freight train movement that conflicted with an M.B.S. clearance previously issued to VIA passenger train No. 198.

Following an investigation, Train Dispatcher Wisinger was issued discipline (Form 104) on June 2, 1982, which stated that he was reduced to Operator until May 1, 1983, and barred from any such position having control over an Interlocking on a C.T.C. operation for permitting an overlap of authority in the issuance of Manual Block System Clearances, a violation of Manual Block System Special Instruction 323.2(b), Victoria Subdivision, April 29, 1982.

The Union contends that the discipline assessed Dispatcher Wisinger is too excessive.

The Company contends that the penalty assessed Dispatcher Wisinger is appropriate.

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:

F. R. Shreenan	– Assistant Supervisor, Labour Relations, Vancouver
J. C. Gaw	– Manager, Rules, Training & Time Service, Montreal
M. M. Yorston	– Labour Relations Officer, Montreal
D. J. David	– Labour Relations Officer, Montreal

And on behalf of the Union:

D. H. Arnold	– System Chairman, Winnipeg
N. Pugh	– CN System Chairman, Winnipeg
F. Sheahan	– CN System Vice Chairman, Ottawa

AWARD OF THE ARBITRATOR

There is no doubt, as is clear from the Joint Statement, that the grievor committed a serious error. He issued conflicting M.B.S. (Manual Block System) clearances, authorizing opposing movements on the same track. Reasonable attention to the train sheet would have shown the opposing movement clearly, and the grievor could easily have issued a clearance subject to the prior arrival of the earlier train. The grievor's error was not attributable to any deficiencies of the system.

The grievor, by his error, created a situation of very great danger. Fortunately, a member of the crew of the prior train overheard the issuing of the later clearance, and the necessary action was taken to avoid disaster. It remains that the grievor's error was a very serious one.

Other cases, notably **Cases 558** and **758**, have dealt with errors of a somewhat similar nature. In each case it was considered that, having regard to the nature of the offence, demotion was, or would have been an appropriate response. It is not necessary to make a finding of incompetence to justify demotion. In the instant case, as in the cases referred to, the circumstances were such as to make such a disciplinary response an appropriate one. In my view, however, demotion for a period of one year imposes a particularly heavy financial loss, without there being any reason shown for concluding that protracted restriction from performing the work in question would have any beneficial effect. In **Case No. 558** a six-month demotion was substituted for the indefinite one imposed, and in **Case No. 758** the grievor was reinstated in employment after a roughly equivalent period.

Having regard to all of the circumstances of the instant case, it is my view that the grievor ought to have been allowed to return to any available work as a Dispatcher after December 1, 1982, subject to his meeting the qualifications of the job, and subject to any intervening seniority claims. It is my award that (always subject to the foregoing), he be reinstated in that classification and compensated for any loss of earnings since that date.

(signed) J. F. W. WEATHERILL
ARBITRATOR