

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1053

Heard at Montreal, Tuesday, April 12th, 1983

Concerning

### CANADIAN PACIFIC LIMITED

and

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Claim of Trainman R. W. Ferris, Medicine Hat, for a total of 1347 miles lost account held out of service for investigation from July 21 to August 3, 1982 and the reduction of the 40 demerit marks debited his record.

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

Trainman R. W. Ferris was head-end Brakeman on Train 2/405/17 on July 19, 1982, which was carrying a carload of special dangerous commodities between Medicine Hat and Calgary and at Mileage 168.75, Brooks Subdivision, the train was recorded by radar to be travelling at 52 miles per hour in violation of Train Order 1121.

An investigation was held on July 21, wherein statements were taken with a Supplementary statement taken on July 28. After the investigation, Trainman Ferris was assessed 40 demerit marks in Form 104 stating as follows:

Please be informed that your record has been Debited with Forty (40) Demerit marks for failing to take any action towards compliance with requirements of Train Order No. 1121 resulting in Second 405, which was carrying one or more full carloads of special dangerous commodities, operating at 37 miles per hour above authorized speed; violation of Rule 210C, UCOR, Mile 168.75, Brooks Subdivision, 1958 July 19th, 1982.

The Union contends that the Company is in violation of Article 32, Clauses (d) and (e) of the Collective Agreement in that Trainman Ferris was held off unnecessarily in connection with the investigation and the discipline of 40 demerit marks assessed his record was excessive, as it was not supported by the evidence produced.

The Union request full compensation for all time lost and reduction in the demerit marks assessed his record.

The Company contends the discipline assessed Trainman Ferris was warranted and that he was not held off unnecessarily for investigation and declined to reduce the demerit marks assessed or reimburse him for miles lost.

#### **FOR THE UNION:**

**(SGD.) PHILIP P. BURKE**  
GENERAL CHAIRMAN

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

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

There appeared on behalf of the Company:

L. J. Masur – Superintendent Labour Relations, Vancouver  
B. P. Scott – Labour Relations Officer, Montreal  
F. R. Shreenan – Assistant Superintendent, Labour Relations, Vancouver

And on behalf of the Union:

Philip P. Burke – General Chairman, Calgary  
J. H. McLeod – Vice-General Chairman, Medicine Hat  
R. T. O'Brien – Vice-President, Ottawa

## **AWARD OF THE ARBITRATOR**

The issues in this case are whether or not the discipline imposed in this case was excessive, and whether or not the grievor was unnecessarily held out of service pending investigation and decision.

As to the discipline imposed, there is no doubt that the grievor was in serious dereliction of duties when, as front-end brakeman, he took no steps to ensure that his train was in compliance with slow orders. His train proceeded at 52 m.p.h., into an area in which a slow order of 35 m.p.h., was in effect, and continued at 52 m.p.h., into an area where a 15 m.p.h., slow order was in effect. His train, as he knew, included a carload of special dangerous commodities.

The grievor appears not to have remembered that the slow orders applied. He had not required that the train orders be read when they were delivered (at the investigation, he corrected his statement in this regard when faced with the statement of the engineman), and he did not remind the engineman of the contents of the order at the time – or times, because the condition existed over a matter of miles) when it was necessary to do so.

Clearly, then, the grievor was in violation of Rule 210C of the U.C.O.R., which is as follows:

210 C Conductors and enginemen must require members of their crew to read aloud and have a definite and proper understanding of the requirements of train orders and clearances as soon as practicable after they have been received. Members of the crew are required, if necessary, to remind conductors and enginemen of their contents.

It is no defence that the grievor had, for a part of this time, been in radio conversation with the towers as to the method of yarding the train. Compliance with speed restrictions was clearly of primary importance. While the penalty of 40 demerits is a very severe one, and larger than had usually been imposed in the past for somewhat similar offences, there had been an emphasis on the importance of speed restrictions following a well-known disaster, and more severe penalties were appropriate. It was not necessary to give special advice to this effect.

Article 32 was, in my view, complied with in most respects. The grievor was not held off unnecessarily in connection with the investigation except that, given his previous record, this was not a dismissable offence and I think that it was not proper to hold him off following the completion of the investigation itself. That a supplementary statement was taken was due to what was seen to be the inaccuracy of a statement the grievor had previously made.

For the foregoing reasons it is my award that the grievor be compensated for loss of earnings for the period from July 29 to August 4, inclusive. In other respects, the grievance is dismissed.

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