

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1502

Heard at Montreal, Wednesday, April 9, 1986

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

The assessment of 20 demerit marks against the record of Brakeman V. E. Walsh, Nelson, B.C. for "failing to ensure a proper understanding with your Conductor concerning securing CP 434385 against unintended movement and for failing to apply a sufficient number of hand brakes to CP 434385 to prevent it from moving, resulting in side collision and derailment, violation UCOR 106, paragraph 2 and UCOR 112, paragraph 1, Grand Forks B.C., June 14th, 1985".

JOINT STATEMENT OF ISSUE:

On June 14th, 1985, Caboose CP 434385 left Track #1 in Grand Forks Yard and ran into the side of car NP 582626. Following investigation, Brakeman Walsh who was a member of the train crew which arrived in Caboose CP 434385 was assessed the discipline noted in the Dispute.

The Union contends that upon assessment of the evidence produced in the investigations, the employee's responsibility for the accident has not been established and, in fact, the evidence produced establishes that the grievor in this case had no responsibility for the accident. The Union further contends that the evidence produced establishes the sole responsibility for the alleged rules violations in this case is with the Conductor.

The Company contends that the responsibility on the part of the grievor is established by assessing the evidence produced in the investigations and has refused to expunge the discipline assessed in this case.

FOR THE UNION:

(SGD.) H. J. MCLEOD
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

R. T. Bay – Assistant Supervisor Labour Relations, Vancouver
B. P. Scott – Labour Relations Officer, Montreal

And on behalf of the Union:

J. H. McLeod – General Chairman, Calgary

AWARD OF THE ARBITRATOR

The parties have joined issue on the exact question that must be answered in determining whether Trainman Walsh committed an infraction when he detrained to uncouple caboose 434385 without ensuring the handbrake was secured. And that is "Did Mr. Walsh establish a clear understanding with Conductor McLeod that the latter would assume the responsibility for securing the handbrake"?

It is common ground that the handbrake was never secured on Caboose 434385 which resulted in the collision and derailment of another train car located at the Grand Forks, B.C., yard.

The evidence clearly established that Conductor McLeod knew that Brakeman Walsh did not intend to apply the handbrake at the moment he detrained. Accordingly, since Conductor McLeod was the only other employee situated in the caboose at the time of the incident the logical inference to be drawn is that Conductor McLeod would discharge that task.

Nevertheless, Conductor McLeod also stated when asked whether the securing of the handbrake was discussed with Mr. Walsh prior to the latter detraining he answered that it was not.

In my view, surely if an understanding was reached between both Mr. McLeod and the grievor that the former would assume the responsibility for securing the handbrake then the two individuals should have at least discussed the matter.

Based on the evidence adduced I am satisfied that an obvious communication problem arose between both Messrs. Walsh and McLeod with respect to the securing of the handbrake. And, as a result of that difficulty an accident occurred. In my view both individuals must assume joint responsibility for the infractions of the UCOR Rules that occurred. Accordingly, each merited the 20 demerit marks that was assessed.

The grievance is therefore denied.

(signed) DAVID H. KATES
ARBITRATOR