

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1503

Heard at Montreal, Wednesday, April 9, 1986

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal of the discipline of Conductor G. A. North, Moose Jaw, whose record was debited with 15 demerit marks for failure to obtain a clear understanding of instructions authorizing train movement prior to allowing train to proceed beyond mileage as stated in Foreman's instructions; violation of Rule 106 and 108, U.C.O.R., Swift Current Subdivision, June 19, 1985.

JOINT STATEMENT OF ISSUE:

On June 19, 1985, Train Extra 5676 East, with Mr. North as Conductor, moved beyond Mileage 10 on the Swift Current Subdivision, the point at which the train was told to stop and not to proceed further until instructions had been received from Foreman R. Jones as prescribed in Train Order No. 778 and pursuant to UCOR Rule 42(g).

The Union contends that Conductor North, who was stationed at the rear of the train in the caboose, believed that authorization to proceed beyond Mileage 10 had been given to the train from Foreman Jones, although he had not heard Foreman Jones' authorization due to radio communication problems Conductor North was experiencing on this trip and for this reason the discipline assessed is unwarranted.

The Company rejects this position and has refused to expunge the discipline as requested.

FOR THE UNION:

(SGD.) H. J. MCLEOD
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. A. LYPKA
FOR: GENERAL MANAGER, OPERATION AND MAINTENANCE.

There appeared on behalf of the Company:

D. A. Lypka – Supervisor Labour Relations, Winnipeg
R. A. Noseworthy – Assistant Supervisor Labour Relations, Winnipeg
B. P. Scott – Labour Relations Officer, Montreal

And on behalf of the Union:

J. H. McLeod – General Chairman, Calgary

AWARD OF THE ARBITRATOR

The simple issue in this case is whether Conductor North should have stopped his train in order to assure himself that proper instruction from Foreman Jones was received by his crew authorizing their movement beyond Mileage 10.

It is common ground that Conductor North was located at the caboose area of his train and was experiencing radio communication difficulties in contacting the engineman and trainman at the head end. Accordingly, he could not receive from them a clear, concise message as to whether instructions to proceed had been communicated by Foreman Jones and, if so, the nature and details of those instructions.

The Company argued that Conductor North's obligation at that juncture was to apply the train's braking system (i.e., to stop the train) until he could satisfy himself by other means of the receipt of the appropriate instructions. In that regard the Company relied upon UCOR Rules 106 and 108 as the guideline that Conductor North was obliged to follow in discharging his duties and responsibilities. A very simplistic translation of those rules would suggest that "when in doubt an employee must take the safest course of action".

The Trade Union submitted that when Conductor North, because of the obvious difficulties he encountered with his radio, could not contact his engineman and trainman at the front end he had sufficiently discharged his duties. Given that difficulty, Conductor North was then entitled to rely on and repose confidence in his colleagues. That is to say, he was entitled "to assume" that his colleagues would not proceed without first receiving appropriate instructions from Foreman Jones. The Trade Union relied upon **CROA 725** to support that particular position.

It is also common ground (albeit irrelevant to the disposition of this case) that Trainman Jones had not given instruction to proceed beyond Mileage 10. But because the latter's communications with the engineman were misinterpreted as instructions, the train proceeded, without proper authority, through Foreman Jones's work site. No accident arose out of the episode. But the Company's concern that Conductor North was "totally in the dark" about the incident was obviously expressed in its decision to take disciplinary action.

It appears to me that, with obvious hindsight, it always pays to exercise caution in the stewardship of a train when in doubt as to a specific situation that might ultimately culminate in a hazardous result. This is even more sensible when it is the conductor who, because of a mechanical breakdown in his radio, is not aware of the immediate status of his train. He is the employee who is primarily responsible and therefore is duty bound to be extremely cautious as to his train's every movement.

From a practical viewpoint I do not know whether this means, as the Trade Union contends, that the conductor must stop his train in every contingency where there is a gap in knowledge with respect to the status of his train. Each case will obviously have to depend on its own circumstances. Quite clearly, however, in situations where the conductor is denied data upon which to make an informed decision with respect to his train's movement he will always err on the side of the angels if he adopts the cautious approach.

This is not intended to suggest any adverse reflection on his colleagues. They, too, are equally bound to exercise caution in the operation of the train. But it is simply no answer for the conductor to say in the event of an infraction of the UCOR rules, that "I did not know what was happening because my radio broke down".

Insofar as **CROA 725** is concerned I would prefer to distinguish it from these facts than express any blanket disagreement with its result. Suffice it to say, for present purposes, that I reserve the right to reconsider that case should a more appropriate opportunity arise.

As a result the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR