

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1506

Heard at Montreal, Tuesday, June 10, 1986

Concerning

### CANADIAN PACIFIC LIMITED

AND

### RAIL CANADA TRAFFIC CONTROLLERS

#### **DISPUTE:**

Discipline assessed Train Dispatcher D. G. Kollesavich, Winnipeg, Manitoba.

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

On February 27th, 1985, Train Dispatcher D. G. Kollesavich was working the 0001 until 0800 shift (third trick) Dispatcher's position on the Branch Line Desk in the Winnipeg Dispatching Center. Part of the territory over which Dispatcher Kollesavich exercised control of train movements included the Minnedosa Subdivision between Minnedosa and Portage la Prairie.

At 0045, Dispatcher Kollesavich issued an MBS clearance to train Extra 5917 East at Minnedosa. This clearance gave Extra 5917 East exclusive authority to proceed on the Minnedosa Subdivision from Minnedosa to Portage la Prairie after train Extra 6022 West arrived at Minnedosa. At the time this MBS clearance was issued, train Extra 5595 East was moving under an MBS clearance granting exclusive authority on the Minnedosa Subdivision from Gladstone to Portage la Prairie. Dispatcher Kollesavich issued a new clearance to train Extra 5917 East at 0048.

Following a Company investigation into the events surrounding this incident, Dispatcher Kollesavich was issued a form 104 discipline notice stating that he had been reduced to the position of Operator for "failure to provide the required protection when issuing MBS clearances to Extra 5595 East and Extra 5917 East, a violation of Manual Block System (MBS) Special Instructions 323.2(b), 323.13(c) and 323.14 contained in Timetable 69, resulting in authorization of conflicting movements on the Minnedosa Sub ..."

The Union contends that the discipline assessed Train Dispatcher Kollesavich is unwarranted and in any event excessive.

The Company contends that the discipline is appropriate.

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

**(SGD.) D. H. ARNOLD**  
SYSTEM GENERAL CHAIRMAN

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

**(SGD.) D. A. LYPKA**  
FOR: GENERAL MANAGER

There appeared on behalf of the Company:

D. A. Lypka	– Supervisor, Labour Relations, Winnipeg
G. W. McBurney	– Assistant Supervisor, Labour Relations, Winnipeg
B. J. Johnson	– Director, Train Operations, Winnipeg Dispatching Centre, Winnipeg
J. W. McColgan	– Labour Relations Officer, Montreal

And on behalf of the Union:

D. H. Arnold – System General Chairman, Winnipeg  
S. C. Ellison – System Vice-General Chairman, Winnipeg  
P. P. Taves – System General Chairman, RCTC-CN, Winnipeg

### **AWARD OF THE ARBITRATOR**

In this case there is no issue that the grievor while engaged as a dispatcher committed a "serious" violation of MBS Special Instruction 323.2 (b), 323.13 (c) and 324.14 by virtue of his failure to provide appropriate coverage or protection with respect to two trains who occupied the same track. I say this is a "serious" infraction notwithstanding the fact that at the material time the likelihood of a collision or other like catastrophe may have been remote. The grievor's breach was "serious", not so much for the immediacy of the safety concern that may have resulted, but because the breach of such an obvious regulation justifiably shook the Company's confidence in Mr. Kollesavich's qualifications to discharge the dispatcher's functions.

In this light the grievor's demotion, in the face of his accumulation of 25 demerit marks, was an appropriate disciplinary response. To have assessed the grievor demerit marks for this infraction may very well have placed the grievor's employment at risk, if not for the culminating incident before me, then perhaps for some subsequent trivial infraction that would have precipitated his termination.

The one concern that was raised at the hearing was as to whether this incident, albeit a serious infraction, should be treated as a first or a fresh incident of misconduct. There was evidence that the grievor had been assessed 50 demerit marks for a similar violation of the rules in 1978. In my view, that incident should clearly have been treated as a "stale" infraction and should not have been considered in determining the length of the grievor's disciplinary demotion. Indeed, the Company's representatives appeared to express some ambivalence with respect to the relevance and weight that should have been given that incident for disciplinary purposes.

Quite clearly, had the previous incident that resulted in fifty demerit marks been more immediate to the culminating incident I would have sustained the penalty of a six month demotion. But, in having regard to its remoteness I have concluded that a three month disciplinary demotion would have been more appropriate.

The Company is directed to amend the grievor's personal record and to compensate him accordingly.

I shall remain seized.

**(signed) DAVID H. KATES**  
**ARBITRATOR**