

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1529

Heard at Montreal, Wednesday, June 11, 1986

Concerning

### ONTARIO NORTHLAND RAILWAY

and

### BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

### EX PARTE

#### **DISPUTE:**

The Ontario Northland Railway assessed thirty (30) demerits to Relief Dispatcher L. K. Toye for violation of UCOR rule 201 paragraph 1, when issuing train order number 223 on October 8, 1985.

#### **BROTHERHOOD'S STATEMENT OF ISSUE:**

On October 8, 1985 Relief Dispatcher L. K. Toye issued train order number 223 Uniform Code of Operating Rules Form "K" train order. In so doing he annulled the second section of train No. 214 of October 8, 1985, which had not been created and for which no schedule would be in effect until 2105 hours on this date.

This Form "K" should have been issued annulling the Second Section of train No. 214 of October 7, 1985.

As a result Mr. Toye and the Work Train Crews were removed from service pending investigations. Mr. Toye was assessed 30 demerits while the train crews were returned to service with no demerits assessed.

The Union feels that fairness was not used in the assessment of demerits and so appealed requesting removal of or considerable reduction in the thirty (30) demerits as assessed.

Step 1 processed November 3, 1985; Step 2 processed December 10, 1985 Company refused claiming violation of time limits; Step 3 processed January 23, 1986 with no reply from Company.

#### **FOR THE BROTHERHOOD:**

**(SGD.) S. C. RUTTAN**

**VICE-GENERAL CHAIRMAN**

There appeared on behalf of the Company:

A. Rotondo – Manager Labour Relations, North Bay  
W. R. Deacon – Trainmaster & Rules Instructor, Englehart  
J. H. Huisjes – P.Eng-Superintendent, Maintenance of Way, North Bay

And on behalf of the Brotherhood:

S. C. Ruttan – Vice-General Chairman, Porquis Junction

## AWARD OF THE ARBITRATOR

The decision made orally that these grievances are timely is reaffirmed.

It is common ground that Train Dispatcher L. K. Toye, **CROA 1529**, was assessed thirty demerit marks for an incorrect train order identifying the cancellation of a train run. In that regard, the grievor violated UCOR Rule 201, paragraph 1 and thereby may have caused a potentially hazardous situation.

It is also common ground that when Train Dispatcher D. K. Johanson, **CROA 1528**, relieved Train Dispatcher Toye he did not "catch" the mistake and thereby is alleged to have violated UCOR Rule 220, paragraph (4). For his infraction in failing to read and to correct the mistaken train order Mr. Johanson was assessed 10 demerit marks.

Because of the emphasis placed by the Company on safety, particularly arising out of the most recent "Hinton" train disaster, efforts are being made to emphasize the significant repercussions that might arise from employee violations of the UCOR rules through the disciplinary process. To be sure, there exist other avenues for ensuring rail traffic safety such as through the introduction of computerized technology and the continued retraining of employees.

The truth of the matter in this case is that no amount of technological innovation or retraining would have prevented the mental error committed by Dispatcher Toye as a result of his authorization of the cancellation of the wrong train. Instead of cancelling the October 7, 1985 run he cancelled an entirely different October 8, 1985 run. And because two work extra trains were scheduled to occupy the same trackage as the October 7, 1985 run the seeds of a catastrophe are most obvious.

In that light, I find that recourse to corrective discipline in the circumstance was warranted. Moreover, because Train Dispatcher Toye had accumulated 15 demerit marks for a like infraction of the UCOR rules at the time the incident occurred I have not had any reason adduced to substitute a milder penalty.

In Mr. Johanson's case, I am prepared to extend him the benefit of a written censure that should serve to alert him to exercise greater caution in the future. The Company is therefore directed to remove the ten demerit marks from Mr. Johanson's personal record.

I shall remain seized.

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