

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1566

Heard at Montreal, Wednesday, October 15, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Appeal of dismissal of Relief Train Dispatcher G. V. Charbonneau, Hornepayne, Ontario, effective 18 July 1985.

JOINT STATEMENT OF ISSUE:

At 1837 hours on 26 June 1985, Relief Train Dispatcher Charbonneau received a request from a Track Foreman to move a track unit from Dunrankin to Oatland. He then cancelled the clear signals for Extra 9485 East and issued a Track Occupancy Permit to the Track Foreman to use the main track between Dunrankin East and Agate. At 1841 hours, Extra 9485 East reported it had run by a stop signal at Dunrankin West after receiving a clear approach signal.

After investigation, the Company assessed forty demerits to the record of Relief Train Dispatcher Charbonneau resulting in his dismissal.

The Union contends that the discipline assessed was too severe, and requests that the discipline be reduced to a demotion to the position of Transportation Operator for a period of one year from the date of the incident.

The Company disagrees and has declined the Union's request

FOR THE UNION:

(SGD.) PETER TAVES
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) JUNE PATRICIA GREEN
FOR: ASSISTANT VICE-PRESIDENT LABOUR RELATIONS.

There appeared on behalf of the Company:

D. Lord – System Labour Relations Officer, Montreal
T. Wilson – Assistant Manager - Rules, Montreal

And on behalf of the Union:

P. Taves – System General Chairman, Winnipeg
J. R. Leclerc – System Vice-General Chairman, Montreal
G. V. Nadon – Local Chairman, Hornepayne
D. Dougherty – Local Chairman, Belleville

AWARD OF THE ARBITRATOR

It is not disputed that Relief Train Dispatcher Charbonneau made a serious error of judgment when he cancelled the clear signal for Extra 9485 East and issued a track occupancy permit to the Track Foreman between Dunrankin East and Agate East. As a result of his actions the train ran by the stop signal being unable to stop on account of the grievor's approach signal which indicated that the second signal would be clear. While fortunately, no accident ensued, the grievor was clearly responsible for a violation of Uniform Code of Operating Rule 292 by the train in question.

The sole issue is the appropriate measure of discipline in the circumstances. In light of the grievor's prior record, particularly during the period which he served as a Dispatcher, the Arbitrator finds it difficult to disagree with the Company's assessment that his actions justify his removal from service as a Dispatcher. It appears that to August 10, 1983, the grievor had accumulated 55 demerit marks, all relating to violations of the Uniform Code of Operating Rules, including at least one instance in which he allowed the entry of a train into the limits of another train with exclusive occupancy of a track. The Arbitrator agrees with the Company that Mr. Charbonneau has demonstrated his inability to operate as a Dispatcher.

There are, however, mitigating circumstances to be considered in assessing the overall measure of discipline appropriate in the instant case. The material establishes that the grievor has some twelve years of service with the Company. Significantly, he incurred no discipline during his close to five years of service as an Operator. There is little reason to believe that he could not again function within that position, to the extent that his duties would not involve responsibilities analogous to those of a Dispatcher. In the circumstances the Arbitrator orders the reinstatement of Mr. Charbonneau to employment as an Operator, in a classification or assignment which does not involve independent responsibility or control over the movement of trains. It appears from the submissions of the parties that such positions are to be found within certain locations and classifications of Operator. Mr. Charbonneau's reinstatement shall be without compensation or benefits, and without any loss of seniority. I retain jurisdiction in the event of any dispute between the parties respecting the implementation of this decision.

(signed) MICHEL G. PICHER
ARBITRATOR