

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1638

Heard at Montreal, Wednesday, April 15, 1987

Concerning

CANADIAN PACIFIC LIMITED

and

CANADIAN SIGNAL AND COMMUNICATIONS UNION

DISPUTE:

S&C Maintainer, Mr. B. D. Hedstrom, was assessed 25 demerit marks for failing to clear train shown on line-up, resulting in collision and damage to equipment; violation of Rule 58, Maintenance of Way Rules and Instructions, Laggan Subdivision, November 6, 1985.

JOINT STATEMENT OF ISSUE:

The Union contends that the discipline assessed was unwarranted and excessive.

The Company denies the Union's contentions.

FOR THE UNION:

(SGD.) JOHN E. PLATT
NATIONAL PRESIDENT

FOR THE COMPANY:

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

There appeared on behalf of the Company:

F. R. Shreenan – Supervisor, Labour Relations, Vancouver
R. A. Colquhoun – Labour Relations Officer, Montreal

And on behalf of the Union:

J. E. Platt – President, Ottawa
A. B. Vigneault – Assistant to the President, Montreal

AWARD OF THE ARBITRATOR

It is not disputed that Signals and Communications Maintainer Hedstrom committed a serious error of judgement in failing to obtain accurate information respecting the whereabouts of an oncoming train on the Laggan Subdivision on November 6, 1985. He was aware that he must be clear of the train to safely perform an inspection of the signals and communications code line by travelling over the road in a track motor car between Banff and Exshaw. Section 1.4 of the Train Line-Up Regulations required him to be in possession of an accurate line-up before operating his light track unit. While he did have a broadcast line-up prior to setting out from Banff, it would also have been possible for Mr. Hedstrom to obtain more up-to-date information on the whereabouts of the oncoming train either by telephone from the Dispatcher or by direct radio contact with the train. He availed himself of neither option. As a result of his own miscalculation of the train's location, he ventured onto the track in a perilous situation which, in fact, resulted in a head-on meeting between the train, Passenger Extra 6068 West and his track motor car. Only because he had the opportunity to sight the train sufficiently in advance was the grievor able to stop his car and attempt to remove it from the track. He was only partially successful, and a section of the car was, in fact, struck by the oncoming locomotive, travelling at 45 miles per hour. Very fortunately, no injury resulted to the grievor and there was no damage to the passenger train.

The only issue in this grievance is the appropriate measure of discipline. The Union relies on the previous work performance of the grievor, stressing that in 10 years of employment prior to the incident in question, he registered a discipline-free record. The Arbitrator accepts the principle underlying the Union's position. If a negative record is to be looked at in assessing the appropriate measure of discipline in a given case, commensurate weight should likewise be given to a good record. As true as that may be, it does not follow, however, that a first offense must necessarily attract a relatively minor measure of discipline. Each incident must be assessed on its own merits, with regard to the nature of the conduct in question, the degree of the employee's responsibility, the seriousness of risk and the consequences, as well as the grievor's record.

In the instant case the error of judgement committed by Mr. Hedstrom was grievous, the risk undertaken could have been fatal and a head-on collision, causing damage to Company equipment did in fact result. In all of the circumstances, having due regard for the grievor's prior record, the Arbitrator cannot find that the 25 demerits assessed were not within the appropriate range of discipline.

For the foregoing reasons, the grievance must be dismissed.

(signed) MICHEL G. PICHER
ARBITRATOR