

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1697

Heard at Montreal, Wednesday, October 14, 1987

Concerning

### CANADIAN PACIFIC LIMITED

And

### RAIL CANADA TRAFFIC CONTROLLERS

#### **DISPUTE:**

Discipline of a permanent demotion assessed Train Dispatcher J. L. Marlin, Calgary, Alberta.

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

On August 18th, 1986 Dispatcher Marlin appeared at a Company investigation in connection with her alleged "violation of Manual Block System Special Instructions 323.2(d) and 323.3(c) on the Brooks Subdivision August 15, 1986." She appeared at the Supplementary Investigation into the same incident on August 22, 1986

Following these investigations Miss Marlin was issued a Form 104 (Discipline Notice) on August 26, 1986 stating that she has been permanently restricted from working as a train dispatcher.

The Union contends that the discipline assessed is excessive and should be reduced.

The Company disagrees and has declined the Union's request.

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

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

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

**(SGD.) J. M. WHITE**  
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

F. R. Shreenan – Supervisor Labour Relations, Vancouver  
J. J. Robson – Assistant Supervisor, Labour Relations, Vancouver  
K. K. Foster – Manager of Rules, Montreal  
J. W. McColgan – Labour Relations Officer, Montreal

And on behalf of the Union:

D. H. Arnold – System General Chairman, Winnipeg  
P. Taves – System General Chairman, RCTC0(CN, Winnipeg)

## **AWARD OF THE ARBITRATOR**

The material establishes that the grievor committed a serious error. While working as a Dispatcher on August 15, 1986, on the Brooks Subdivision, she communicated CMBS Clearance No. 632 addressed to Extra 5999 West to Train Operator A.H. Stroh at Medicine Hat. Her instruction was that the train was to "Take siding at Bowell". Mr. Stroh erroneously copied the clearance to read "Hold main track at Bowell". Following required procedure, he repeated the clearance as he had recorded it in a radio communication back to the grievor. At that point the grievor failed to pick up the vital error on the repeat of the clearance, as a result of which two trains, Extra 5999 West and Extra 6009 East were both under instructions to "Hold main track at Bowell". They were, in other words, placed on a collision course on a single main track. Fortunately, Extra 5999 West stopped first on the main track at Bowell and its Headend Trainman lined the west siding switch for Extra 6009 East to take the siding. On approaching Bowell, the crew of Extra 6009 East radioed that their authorization was to hold the main track. This was overheard by the crew on Extra 5999 West who immediately advised Extra 6009 East that the main track was occupied. A collision was thereby averted.

Shortly prior to this incident the grievor was the subject of a six month demotion from the position of train dispatcher, as of May 6, 1985, for a violation of UCOR Rule 220, paragraph 4. Her record prior to that time includes other infractions of UCOR provisions. In the instant case it is not disputed that Ms. Marlin violated MBS Special Instructions Item 323.2(d) and Item 323.3(c).

In the circumstances the Arbitrator has difficulty with the submission of the Union, firstly to the effect that the grievor's error must have been caused by distraction caused by poor working conditions in the Calgary Dispatching Office, and secondly that a "permanent" demotion is inappropriate as a form of discipline in any event. Firstly, it must be stressed that "permanent" in this context does not necessarily mean forever. It is, rather, a reflection of the judgement of the Company, based on reasonable grounds, that the grievor has not displayed the attributes of care and concentration sufficient to justify her continued employment in the position of train dispatcher. Should the grievor's performance and record at some future date demonstrate that she has the attributes to safely discharge the responsibilities of a train dispatcher she may again be considered for advancement to that position. If it could be shown in the future that the Company arbitrarily refused to consider or assess the grievor for promotion to the position of train dispatcher it would, of course, be answerable to a grievance under the job posting and promotion provisions of the collective agreement. For the purposes of the instant grievance, however, the Arbitrator is satisfied that the prior discipline imposed against the grievor, including a temporary demotion, has not had the necessary rehabilitative effect. Bearing in mind the critical responsibility of a train dispatcher for the safe operation of train movements, I cannot conclude that the demotion of the grievor from the position of train dispatcher was inappropriate in the circumstances.

For the forgoing reasons, the grievance must be dismissed.

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**