

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1710

Heard at Montreal, Tuesday, November 10, 1987

Concerning

CANADIAN NATIONAL RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Assessment of 40 demerit marks to Trainman P. Taylor, 30 June 1986.

JOINT STATEMENT OF ISSUE:

On 30 June 1986, Trainman Taylor was employed as Front Trainman on Extra 9404 West when it proceeded by Signal 015D displaying a stop indication.

Following investigation, Mr. Taylor's record was assessed 40 demerit marks for: "Failure to ensure compliance with signal indication resulting in the violation of U.C.O.R. Rule 292 at Signal 015D, Fort York, Oakville Subdivision while employed as a Front Trainman on Extra 9404 West on Monday, June 30th, 1986."

The Union appealed the assessment of 40 demerit marks on the grounds it was too severe.

The Company declined the appeal.

FOR THE UNION:

(SGD.) R. A. BENNETT
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. W. Coughlin	– Manager Labour Relations, Montreal
J. Pasteris	– Labour Relations Officer, Montreal
A. E. Heft	– Labour Relations Officer, Montreal
D. K. House	– System Transportation Officer, Montreal
R. J. Hayes	– Trainmaster, Toronto

And on behalf of the Union:

T. G. Hodges	– General Chairman, Toronto
B. Leclerc	– General Chairman, Quebec
N. Robinson	– Local Chairman, Toronto

AWARD OF THE ARBITRATOR

The material establishes that Trainman Taylor did violate U.C.O.R. Rule 292 by failing to comply with a stop signal. In doing so he relied on the opinion of his engineer that the signal in question was being installed or repaired, and was not in fact operative. That belief was erroneous, as reference to the documentation then in Trainman Taylor's possession would have quickly shown. He was, in my view, deserving of a serious measure of discipline.

The material does, however, reveal one mitigating factor. It is not disputed that the portion of the Oakville Subdivision where this incident occurred had previously been the site of the installation of a number of new signals, some of which were covered with bags, and some of which were not. Some of the uncovered signals were in fact functioning, with instructions to the employees to disregard them. For a period of time the signal which caused the confusion in the instant case was in fact operating, subject to an instruction to crew members to disregard it. That circumstance does not exonerate Trainman Taylor of all blame. It does, however, throw a somewhat different light on the error of judgement he committed. In the circumstances, bearing in mind the importance of Rule 292, the Arbitrator is satisfied that the assessment of thirty demerits is more appropriate. The grievor's record shall therefore be amended accordingly.

(sgd.) MICHEL G. PICHER
ARBITRATOR