

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1731

Heard at Montreal, Wednesday December 9, 1987

Concerning

CANADIAN NATIONAL RAILWAY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Discipline assessed to Locomotive Engineer W.H. MacDonald at Cambellton, New Brunswick, March 10, 1987.

JOINT STATEMENT OF ISSUE:

On March 9, 1987, Locomotive Engineer MacDonald was operating Work Extra 9548 on the Nepisiquit Subdivision. While switching at Brunswick Mines, Work Extra 9548 ran from mileage 14.7 to mileage 0.4, resulting in a derailment at approximately 70 mph.

Following an investigation Locomotive Engineer MacDonald's record was assessed with a 6 month suspension for: "violation of U.C.O.R. General Notice, paragraph one (1) page 2, U.C.O.R. Rule 108 page 58, and U.C.O.R. Rule 106 page 58, not ensuring movement was safely protected to proceed beyond the main track switch, mileage 14.7 Nepisiquit Subdivision resulting in derailment at mileage 0.4 Nepisiquit Subdivision."

The Brotherhood appealed the discipline assessed to Locomotive Engineer MacDonald on the grounds it was unwarranted.

The Company declined the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) G. HALLÉ
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
H. Hartman	– Labour Relations Officer, Moncton
M. Darby	– Co-Ordinator Transportation, Montreal
S. Grou	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

G. Hallé	– General Chairman, Quebec
G. Love	– Local General Chairman, Moncton
P. Seagris	– General Chiarman, Winnipeg
W. H. MacDonald	– Grievor

AWARD OF THE ARBITRATOR

The grievor was suspended for six months for his alleged fault in permitting a runaway train resulting in a serious derailment. On March 9, 1987 he was assigned to Work Extra 9548 on the Nepisiguit Subdivision. Part of that assignment involved switching at Brunswick Mines, where the train was to collect some twenty-three cars.

To extract the required cars from the yard at Brunswick Mines the grievor's train was required initially to withdraw a total of thirty-one cars from the yard. Engineer MacDonald was alone in the cab of a consist of two engines. As instructed, he coupled the engines with the cars in Tracks B-226, B-225 and B-224, cumulatively in that order. He was then required to initiate a reverse movement back from track 224 towards the yard limit. At the beginning of his backward movement Engineer MacDonald could not be aware of how many cars he was pulling, although it was usual to collect approximately twenty cars at Brunswick Mines. It is common ground that his view was obscured by a covered gondola car coupled to the locomotives, as well as by blowing snow.

Mr. MacDonald's only communication was with his head-end trainman, Mr. Court. The unchallenged account of Mr. MacDonald is that Trainman Court contacted him on the radio and advised him that "there (were) twenty-three cars in the movement and that the air was not coupled." It is common ground that in switching cars from one track to another a train may generally rely on the brakes of the locomotive, so that the cars being switched are not hooked up to the air brake system. That was the normal practice at Brunswick Mines. When a train is fully assembled the air system is then coupled so that all of the cars have their own braking force. In the normal course, therefore, assuming a load of twenty-three cars, Mr. MacDonald would not have expected any need to couple the air brake system until he had completed the assembly of his train.

Unbeknownst to the grievor, however, and contrary to the impression he took from whatever Mr. Court may have said, he was in fact pulling thirty-one cars, heavily loaded with ore. By his account, he pulled the movement back on a downward grade approximately twenty car lengths from the yard switch. He then had a full service application of his locomotives' independent brakes in effect. Notwithstanding that, however, the unit of cars began to accelerate instead of slow down. At that point his two locomotives and a substantial segment of the cars were on a 1.19 per cent downhill grade, and Engineer MacDonald realized that he was losing control of the unit. He then applied the emergency brakes, and they did nothing to restrict the speed, which continued to increase. He was then the only member of the crew aboard, the others being in the caboose which was uncoupled on Track 221 in the switching yard.

Mr. MacDonald then experienced a terrifying ride of some twenty minutes at the head of the unit, which travelled over a distance of some fourteen miles downhill. The movement, weighing some 3,700 tons, was 1,900 feet in length and reached speeds of 75 miles per hour. The grievor stayed in the locomotive, applying the brakes and sounding the train's whistle, as the unit went through three public and seven private level crossings. Being aware that the Nepisiguit Subdivision forms a junction with the Newcastle Subdivision, upon which a VIA passenger train was travelling at or about that time, Engineer MacDonald radioed the dispatcher advising him that his train was running out of control, thereby permitting the dispatcher to communicate immediately with the passenger train which in fact had just safely cleared the junction. This also permitted the dispatcher to alert field crews, with instructions to line all switches to minimize the danger to the runaway unit if it should reach the junction, and to get clear of the track.

During the course of the unit's descent Mr. MacDonald left the locomotives and proceeded to the first car in an attempt to slow or stop the train by the use of its hand brake. This proved fruitless. When it was apparent that nothing could stop the unit, as it approached the junction with the Newcastle Subdivision, the grievor sat on the floor of the cab of the locomotive, attempting to protect himself as best he could. There was little doubt that his train was in all likelihood going to derail on a curve, given the speed at which it was travelling. That is what ultimately did happen. At Mile 0.34 of the Nipisiguit Subdivision the two locomotives and all thirty-one cars left the track. The engines came to rest on their side and, miraculously, Mr. MacDonald walked away from the wreckage unhurt but for slight bruises to his head. During the twenty minutes of his train's descent the dispatcher, who stayed in radio contact with Mr. MacDonald, was able to alert other trains and work crews, and make arrangements for fire and ambulance services to be on hand. Fortunately no fire occurred and there were no casualties. The cost of the derailment exceeded \$1.2 million.

The issue is whether the Company had just cause to discipline Mr. MacDonald. It must establish, on the balance of probabilities, that he was negligent or otherwise failed in his duties, thereby causing or contributing to the runaway and derailment.

What does the evidence disclose? It is common ground that switching was generally performed in the Brunswick Mines Yard in such a way that the air brakes were not normally coupled when twenty-three cars were being moved. It also established that Mr. MacDonald could not have known in advance how many cars he would be coupling onto at the Brunswick Mines Yard. That information is provided to the Conductor only when the work unit arrives on the mine's property. The only information Mr. MacDonald had in that regard was what was relayed to him during the switching operation by Mr. Court. While Mr. Court was apparently not asked subsequently by the Company precisely what he did say to Mr. MacDonald, the grievor's account, which the Arbitrator accepts for the purposes of this grievance, is that he understood from what Mr. Court said to him that he had twenty-three cars in tow as he was backing towards the downhill grade. It is not disputed that that would have been a safe maneuver, and indeed it was done on a regular basis, using only the brakes of the locomotives.

In the circumstances of this case Mr. MacDonald must be judged only on the basis of what he did, having regard to the facts at his disposal, and not on the basis of facts unknown to him, or the catastrophic result which he could not have predicted. Mr. MacDonald is sixty years old, has been an employee of the Company since 1945 and is a seasoned and skilled engineer. In forty-three years of service he has accrued discipline on only two occasions, for a total of five and ten demerits respectively. The extraordinary quality of that record speaks in some significant measure to the level of care and attention which he has habitually brought to his work. Mr. MacDonald's record was fully clear at the time of the incident at Brunswick Mines.

In the circumstances disclosed the Arbitrator can find no error of judgement, negligence or the violation of any rule to have been committed by Engineer MacDonald. I accept his statement that he first encountered braking difficulty when he had backed within twenty cars of the switch. He could not, therefore, have reason to know that he was pulling more than twenty-three cars. He had no reason to doubt his impression from the communication of Mr. Court that that was the number that he had in tow. I cannot accept the argument of the Company that Mr. MacDonald should have known that he was pulling thirty-one cars. Given his state of knowledge, his actions were entirely proper.

The Arbitrator therefore concludes that the Company was without cause for the imposition of any discipline against Engineer MacDonald in the circumstances of this case. His suspension shall therefore be struck from his record and he shall be compensated forthwith for all wages and benefits lost. I retain jurisdiction in the event of any misunderstanding with respect to the interpretation or implementation of this award.

(signed) MICHEL G. PICHER
ARBITRATOR