

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1772

Heard at Montreal, Wednesday, 13 April 1988

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Dismissal of Locomotive Engineer F.P. Dalton, Montreal, Quebec, for nullifying the operation of the safety control foot pedal on DE Unit 8031 on April 28, 1987.

JOINT STATEMENT OF ISSUE:

On April 28, 1987, Mr. F.P. Dalton was employed as a Locomotive Engineer on Assignment #12, St. Luc Yard, Montreal, Quebec. During this tour of duty, Road Foreman of Engines R.D. Hoas entered Locomotive 8031, being operated by Locomotive Engineer Dalton, and observed that the safety control foot pedal was blocked by a large yellow brake pipe wrench.

On completion of Engineer Dalton's tour of duty on April 30, 1987, he was held out of service pending investigation which occurred on May 12, 1987. Following this investigation, he was dismissed for the offence noted in the Dispute, a violation of Item 1.43, Section 9, Form CS-44; Item 64, Form 583; and Item 13.1(a), Form 582A.

The Brotherhood has appealed the dismissal on the grounds that it was too severe a penalty.

The Company contends that dismissal was the appropriate penalty in the circumstances and has declined the Union's appeal.

FOR THE BROTHERHOOD:

(SGD.) G. N. WYNNE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. A. LINN
GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

R. J. Pelland	– Labour Relations Officer, Montreal
R. A. Decicco	– Supervisor, Labour Relations, Toronto
B. P. Scott	– Labour Relations Officer, Montreal
F. Pellgrino	– Master Mechanic, Quebec Division, Montreal

And on behalf of the Brotherhood:

G. N. Wynne	– General Chairman, Smiths Falls
T. G. Hucker	– General Chairman, Calgary
G. Hallé	– General Chairman, CN East, Quebec

AWARD OF THE ARBITRATOR

Engineer Dalton was discharged for nullifying the operation of the safety control foot pedal, or “deadman’s pedal”, during his tour of duty in yard service on April 28, 1987. It is not disputed that he permanently engaged the safety control foot pedal by placing a large pipe wrench on it. The deadman’s pedal is one of the most important pieces of safety equipment in a locomotive, designed so that it must remain depressed by the locomotive engineer’s foot in order for the unit to operate. Should the engineer become incapacitated for any reason, the disengaging of the foot pedal causes an automatic brake application and reduces the engine’s power to idle, causing a moving train to come to an immediate stop.

The severity of any interference with the normal operation of the foot pedal is not in controversy. Form CS-44, General Operating Instructions, Section 9, Item 1.13 provides:

1.13 Nullifying the operation of the safety control foot pedal or any other safety control system or device is prohibited.

In the wake of the Hinton collision and the recommendation of the Royal Commission Report of Mr. Justice Foisy, on July 25, 1986, the Company issued Bulletin No. 60, advising all locomotive engineers and trainmen of the gravity of any infraction with respect to operation of the safety control foot pedal. That communication states, in part, the following:

This practice (blocking the safety control foot pedal) has not and will not be condoned on CP Rail. You are hereby reminded of the requirements of Item 1.13, Section 9, Form CS-44 and Item 64, Form 583, which demands the pressure of the foot as the only means of operating this safety control feature.

Henceforth, violations of these rules and other methods of rendering these safety control features inoperative, will be considered as a dismissable offense. Please be governed accordingly.

The evidence establishes beyond dispute that on April 28, 1987 the grievor did violate the General Operating Instructions governing the use of the safety control foot pedal. He offered an explanation for his action. According to his account, while attempting to move his unit in reverse during yard switching, on four separate occasions he experienced a penalty application of the brakes, which could be caused by defective operation of the foot pedal. According to his explanation he therefore used the heavy brake pipe key as a weight to hold down the foot pedal, after which he experienced no further difficulty.

Shortly thereafter Road Foreman R. Hoas boarded Locomotive Engineer Dalton’s unit and noticed that he had placed the wrench over the foot pedal. When Foreman Hoas advised the grievor that this practice was not permitted, Mr. Dalton explained that he had made the adjustment in response to what he believed was a problem with the mechanics of the pedal. Mr. Hoas then left the unit, giving no instructions that the grievor should cease what he was doing or take the locomotive unit out of service. He subsequently initiated an instruction which resulted in Diesel Shop Mechanic Gilles Ruel examining the foot pedal some two and a half hours later, during which time the grievor was effectively permitted to continue operating his locomotive unit.

Tampering with the deadman’s pedal is an extremely serious infraction of the rules governing a Locomotive Engineer. Indeed, the Arbitrator accepts that, absent compelling mitigating factors, it can be a dismissable offense (*see CROA 1676*).

Engineer Dalton is an employee of thirty-two years’ service, with no disciplinary record at the time of the incident and, it appears, little significant discipline over his entire career with the Company. In this, as in any discharge, the burden of proof is upon the employer. It must establish not only the infraction of the rule in question, but that the grievor’s discharge was justified in the circumstances.

In the instant case there is one mitigating factor which causes the Arbitrator concern. It is not disputed that Locomotive Engineer Dalton did operate in direct violation of the rules concerning the use of the deadman’s pedal. However, for a substantial portion of time, indeed the bulk of the time during which he did violate the rule, he acted with the knowledge and apparent acquiescence of Foreman Hoas. The failure of the Foreman to immediately direct him to cease the practice in which he was engaged, or alternatively, to order him to take his locomotive out of service seriously undermines the strength of the Company’s submission with respect to the gravity of the situation. The

Arbitrator is not persuaded by the argument of the Company that the Foreman, himself a former locomotive engineer, was relatively inexperienced in management.

In the circumstances of this case I must conclude that it would be inequitable to entirely disregard the attitude and message projected by the Road Foreman of Engines, against whom no disciplinary action appears to have been taken, in assessing the measure of discipline appropriate to the grievor's actions. On the whole, taking the Foreman's involvement into account, as well as the grievor's prior service and good record, I am persuaded that this is an appropriate case for the substitution of a lesser penalty. The grievor shall therefore be reinstated in his employment, without compensation or benefits and without loss of seniority, with his record to reflect a suspension from the date of his discharge to the date of his reinstatement.

I retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award

April 15, 1988

(signed) MICHEL G. PICHER
ARBITRATOR