

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1779

Heard at Montreal, Tuesday, May 10, 1988

Concerning

CANADIAN PACIFIC LIMITED

And

RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Discipline assessed Mr. J.J. Kazakoff of Nelson, B.C.

JOINT STATEMENT OF ISSUE:

On April 24, 1987, Dispatcher Kazakoff appeared at a Company investigation in connection with his issuance of CMBS Clearance No. 23 at Nelson on April 21, 1987.

Following this investigation, Mr. Kazakoff was issued a Form 104 (Discipline Notice) advising him that he was permanently demoted to operator for failing to correctly transmit CMBS Clearance No. 23 to Extra 6031 East and for failing to properly check the repeat of CMBS Clearance No. 23 resulting in incorrect clearance being completed and delivered to Extra 6031 East; violation of Manual Block System Special Instructions 323.3(b), 323.3(c) and 323.2(d) at Nelson, B.C., April 21, 1987.

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

The Company contends that the discipline is appropriate.

FOR THE UNION:

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

FOR THE COMPANY:

(SGD.) J. M. WHITE
GENERAL MANAGER, OPERATION & MAINTENANCE, WEST

There appeared on behalf of the Company:

D. A. Lypka – Supervisor, Labour Relations, Vancouver
J. W. McColgan – Labour Relations Office, Montreal
G. W. McBurney – Assistant Supervisor, Labour Relations, Winnipeg
R. Martel – Observer

And on behalf of the Union:

D. H. Arnold – System General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The material establishes that on April 21, 1987, while working his regular position as First Train Dispatcher West at Nelson, B.C., Mr. Kazakoff issued CMBS Clearance No. 23 to Operator T. J. Simon. The information being transmitted to the operator by the grievor was displayed on a computer terminal in front of him. In relaying the information Mr. Kazakoff transposed the engine number for the movement in question, 6031, relating it incorrectly as 3061. When the message was read back to the grievor by Operator Simon it was his obligation to reread the information on his video display terminal, checking it against the operator's repeat. A recording of the communication between the grievor and the operator confirms that both the initial message transmitted by the grievor and the repeat of the message by the operator incorrectly transposed the engine number. The grievor therefore failed both in correctly providing the initial information and carefully double checking the accuracy of the operator's confirmation before issuing the train clearance. While in the instant case the error was relatively benign, as it created no risk to train movements, the Company's position is that the grievor's inattention and failure to properly communicate and check the information going between himself and the operator is extremely serious, and in a different context could have the gravest of consequences.

The Union submits that two factors must be taken into account. Firstly, it is common ground that the grievor had recently returned from a temporary demotion to the position of operator, and that a new computer had been put in place in the Nelson dispatching office during his demotion. The Union's representative submits that the Company should have provided the grievor with an adequate period of familiarization with the new video display terminal prior to assigning him the full responsibilities of a train dispatcher. Secondly, based on a letter from an optometrist placed in evidence, the Union asserts that the grievor was suffering visual problems at the time, which were subsequently corrected by a prescription for trifocal lenses.

In the Arbitrator's view neither of these arguments is compelling in the circumstances of this case. It is not disputed that during the time immediately prior to the incident under review the grievor worked as an operator, and in that capacity he was also required to operate a video display terminal. In my view neither the substitution of a new video screen in the dispatcher's office, nor the transition from the previous manual system of dispatching to the computerized system can excuse the failure of Mr. Kazakoff, a train dispatcher of twenty year's standing, from his failure to observe the most essential requirements of transmitting and re-checking train clearance information. It is not disputed that he did fail to meet a requirement and standard that has remained unchanged for generations.

Nor do I find the suggestion that the grievor's eyesight may have been a factor to be particularly compelling. Firstly, the letter from Dr. Allen, the grievor's optometrist, does not advance a direct medical opinion to establish that the grievor's transposition of the numbers on the computer display terminal resulted from a fault in his vision. Secondly, it is undisputed that the message which Mr. Kazakoff took from the video screen and relayed verbally to the operator included a total of some forty digits, thirty-six of which the grievor was able to read and relay accurately without any apparent difficulty. In these circumstances I must find that the Company has established that the grievor failed to correctly transmit and check the engine number on the train clearance in question and that the Union has failed to establish, on the balance of probabilities, that his error was caused either by an unfamiliarity with the equipment or by an inability to accurately read numbers displayed on his computer screen. The fact that the grievor correctly identified one hundred per cent of the forty digits appearing on the screen, and merely erred in transposing four of them, casts great doubt on the suggestion that Mr. Kazakoff's error was due to a physical incapacity.

In the two years prior to the incident giving rise to this grievance the grievor was the subject of serious discipline on two occasions. In May of 1985 he was assessed thirty demerits for failing to show a work train on a track line-up and in October of 1986 was demoted to operator for a period of six months for failing to correctly transmit and check a repeat of an MBS clearance, the very infraction for which he was disciplined in the instant case. In these circumstances the Arbitrator cannot conclude that the demotion of the grievor to the position of operator on a permanent basis was not an appropriate disciplinary response. Bearing in mind the gravity of the consequences of that action for the grievor, given that he is within a few years of his retirement, as has been noted in prior cases, it should be stressed that a "permanent" demotion does not foreclose the possibility that the grievor may, having given the Company satisfactory proof of his ability to resume the responsibilities of a train dispatcher, again be returned to that position.

For the foregoing reasons the grievance must be dismissed.
May 13, 1988

(signed) MICHEL G. PICHER
ARBITRATOR