

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1919

Heard at Montreal, Wednesday, 10 May 1989

Concerning

CANADIAN PACIFIC LIMITED

And

RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Appeal of discipline assessed the record of Train Dispatcher G.R. Ries, Calgary, Alberta and his consequent discharge due to the accumulation of demerit marks in excess of sixty.

JOINT STATEMENT OF ISSUE:

On September 25, 1987, Dispatcher Ries appeared at a Company investigation in connection with his "alleged violation Train Line-up Regulations Items 3.13, 3.15 and 3.17 contained in Form 568 Maintenance of Way Rules and Instructions and instructions contained in Train Dispatcher Manual Page LU-4 and instructions contained in Items 3 and 4 of Superintendent's Bulletin file 520.09 dated January 4, 1984."

Following this investigation, Mr. Ries was issued a Form 104 (Discipline Notice) on October 17, 1987, stating that his record has been debited 40 demerit marks for inserting Extra 5848 West on Train Line-up which had already been repeated and completed; for allowing Extra 5848 West to operate without being shown on that Line-up; for failing to show designated cancelled time on that Line-up; violation Items 3.15 and 3.17, Train Line-up Regulations and Superintendent's bulletined instructions dated January 4, 1984; Calgary, September 12, 1987. He was issued a second Form 104 on the same day stating that he had been dismissed for accumulation of demerit marks.

The Union contends that the discipline assessed Dispatcher Ries is far too 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, HHS

There appeared on behalf of the Company:

B. L. Mittleman – Counsel, Montreal
D. A. Lypka – Supervisor, Labour Relations, Vancouver
J. W. McColgan – Labour Relations Officer, Montreal
R. R. Roy – Rules Instructor, Montreal

And on behalf of the Union:

S. G. Soronow – Counsel, Winnipeg
D. H. Arnold – System General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

In the Arbitrator's view the circumstances of this case closely parallel those disclosed in **CROA 1401**. That grievance concerned an employee who was not of long service, having some ten years' seniority, also employed as a dispatcher by the Company at Nelson, B.C. On June 29, 1982 he failed to show a work extra on the track line-up operating on the Kimberley Subdivision, which resulted in a collision between the work train and a track motor car. As a result of that incident the grievor in that case, Mr. Baber, was assessed thirty demerits. Subsequently, on October 8, 1983, some fifteen months later, he again failed to ensure that a train did not operate when it was not shown on the track line-up for the subdivision under his protection. In Mr. Baber's case, the sanction applied by the Company was restriction from working as a train dispatcher for a period of one year.

The Arbitrator finds it difficult to distinguish the facts in **CROA 1401** and those which appear in the instant case. The Company asserts that in this case there was an element of deception on the part of the grievor. It appears that the Company's decision to discharge Mr. Ries was motivated, in part, by its belief that he attempted to cover up or conceal his error with respect to failing to include Extra 5848 West in the line-up. It is common ground that when he realized his mistake, he entered the train on the line-up sheet, then drew a line through the entry, with his initials added. I must agree with counsel for the Union that it is difficult to infer from that conduct any deliberate intention on the grievor's part to conceal this event from the Company. Indeed, it appears that it was this entry, coupled with the tape recording of the grievor's radio communication with the roadmaster, which led the Company to discover the incident and ultimately impose discipline. The evidence before the Arbitrator is not sufficient to confirm any deliberate scheme on the part of the grievor to conceal his error.

None of these observations should be construed as excusing the gravity of the error committed by Mr. Ries. It is common ground that he failed to enter Extra 5848 West on the original line-up and, once aware of his error, failed to follow the requisite procedures to stop the train, because of his belief that it could safely be moved onto a siding. In the result the train travelled some nine minutes across the subdivision in circumstances where Company personnel working in the vicinity would have been unaware of its whereabouts. The material also discloses that the grievor was involved in a similar incident on April 6, 1987, as a result of which he was assessed forty demerits. In the circumstances it is the Arbitrator's view that as a result of the incident of September 12, 1987, the grievor became liable to a serious measure of discipline.

On a careful review of the facts of this case, I am not persuaded that the merits of the grievor's situation are sufficiently different from those of the grievor in **CROA 1401** so as to justify outright discharge rather than demotion as the appropriate disciplinary sanction. While the grievor's four years of service are somewhat less than the ten years' service of the grievor in **CROA 1401**, neither grievor can be described as a long service employee as that term is generally understood. However, given the gravity of the grievor's error, and the potential for calamitous consequences which it unleashed, I am not persuaded that this is an appropriate case for an order in respect of compensation, or for a limitation to be placed on the period of effective demotion.

For these reasons the Arbitrator orders that the grievor be reinstated forthwith into the position of operator, without compensation, and without loss of seniority, his disciplinary record to stand at forty demerits at the time of reinstatement.

May 12, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR