

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1923

Heard at Montreal, Tuesday, 13 June 1989

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

And

### BROTHERHOOD OF LOCOMOTIVE ENGINEERS

#### **DISPUTE:**

Discipline assessed the record of Locomotive Engineer R. E. Hale, of London, effective 27 June 1988 and subsequent discharge, effective 2 August 1988.

#### **JOINT STATEMENT OF ISSUE:**

On 27 June 1988, Locomotive Engineer Hale was assigned to Train 574. On that date, Train 574 collided with Train 571 in Talbotville Yard.

Following an investigation, Locomotive Engineer Hale's personal record was assessed with twenty demerit marks for: "violation of UCOR 104, paragraph 6; UCOR 105; UCOR 106 and; Section 3.0 CN Rail General Operation Instructions at Talbotville Yard, 27 June 1988."

The discipline assessment led to Locomotive Engineer Hale's discharge, effective 2 August 1988, due to the accumulation of sixty or more demerit marks.

The Brotherhood contends the discipline and subsequent discharge was unwarranted and in any case unduly severe.

The Company declined the appeal.

#### **FOR THE BROTHERHOOD:**

**(SGD) J. D. PICKLE**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD) M. DELGRECO**  
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

P. D. Morissey – Labour Relations Officer, Montreal  
J. B. Bart – Manager, Labour Relations, Montreal  
S. F. McConville – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. D. Pickle – General Chairman, Sarnia  
C. Hamilton – Vice-General Chairman, Montreal  
G. Binsfeld – Secretary, G.C.A., St. Catharines  
R. E. Hale – Grievor

## AWARD OF THE ARBITRATOR

It is common ground that on June 27, 1988, Locomotive Engineer Hale was operating Train 574 when it became involved in a side collision with Train 571 during switching in Talbotville Yard. The Arbitrator is presented with conflicting accounts of what transpired.

According to Mr. Hale, as his unit was on Track XJ04, approaching Track XJ02, he received a hand signal from the conductor of Train 571, J.H. Patterson, that indicated to him that he should proceed forward onto Track XJ02. Unbeknownst to Mr. Hale, and out of his line of sight, Engine 1383 of Train 571 was proceeding north, in his direction, on Track XJ02 pushing a single box car ahead of it. The grievor's movement proceeded through the switch, running afoul of Track XJ02 just as the box car and locomotive of Train 571 were passing. Both the box car and the locomotive were struck, as a result of which the grievor and Locomotive Engineer Campbell, at the controls of Engine 1383, were seriously injured.

The quality of the grievor's actions in this instance turn in substantial part on what was said and signalled to him by Conductor Patterson. There appears to be no conflict that Conductor Patterson did line the switch linking Track XJ04 and Track XJ02 to facilitate the movement of the grievor's train onto Track XJ02. It is also common ground that by radio Mr. Patterson advised Mr. Hale that he "had the route", which is to say that the switch was fully lined for his train. At this point, however, the accounts related by the grievor and by Conductor Patterson diverge. Mr. Patterson states that he told Mr. Hale by radio that he would have the route once the box car being pushed by Engine 1383 had cleared. He also denies that he made any hand signal instructing Engineer Hale to proceed forward. The grievor says that Mr. Patterson said nothing about Train 571 or the box car, and gave him the hand signal to proceed.

To accept the grievor's account of these events it must be concluded that Conductor Patterson, who had a clear view of both trains, knowingly, if not deliberately, signalled Locomotive Engineer Hale onto what would almost certainly be a collision course. The Arbitrator is inclined to accept Mr. Patterson's denial of any hand signal and his statement that he indicated to Mr. Hale that he could proceed only after the C&O box car had cleared. That account is supported by the corroborating evidence of Brakeman Nazar, who was riding the leading end of the car being pushed by Engine 1383. He states that he distinctly heard the words "when the C&O clears" on his own chest pack radio, a reference to the box car being pushed by Engine 1383. I am satisfied, on the balance of probabilities that the grievor did proceed in error, and without sufficient knowledge as to the state of the track ahead of him and, indeed, without any signal or instruction that it was safe for him to move his unit onto Track XJ02.

The fact that there may or may not have been joint responsibility in the instant case does not relieve the grievor of the consequences of his own error. I am satisfied that the grievor was not moving at restricted speed, as required, and that he was in violation of Paragraph 6 of UCOR Rule 104 in that he neither saw nor knew that the conflicting route was clear.

At the time of the incident the grievor's record stood at fifty-five demerits. The Arbitrator must reluctantly conclude that neither the grievor's prior service, nor the quality of his record can be viewed as positive or mitigating factors in the circumstances. Rules' violations resulting in a collision involving serious personal injury and damage to Company equipment are obviously deserving of a serious measure of discipline. I am satisfied that the twenty demerits assessed to the grievor in the circumstances were within the appropriate range of penalty.

For the foregoing reasons the grievance must be dismissed.

June 16, 1989

**(Sgd.) MICHEL G. PICHER**  
ARBITRATOR