

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1969

Heard at Montreal, Wednesday, 15 November 1989

Concerning

CANADIAN PACIFIC LIMITED

And

UNITED TRANSPORTATION UNION

DISPUTE:

Company declined to remove the discipline assessed Conductor Jacques Gauthier and allow payment of all lost time.

JOINT STATEMENT OF ISSUE:

On January 24, 1989, Company officers performed a speed test on Conductor Gauthier's train at Mileage 0.9, Trois Rivieres Subdivision.

The test showed that his train violated the speed limit by fourteen miles per hour.

Conductor Gauthier was in the body of the passenger car and he was aware that the engineman had applied a brake, because their train was slowing down.

Also, his location in the body of the car did not give him access to the speedometer.

Conductor Gauthier was withheld from service.

After an ensuing investigation, Conductor Gauthier was assessed with fifteen demerit marks for failure to ensure his train was operated in such a manner as to comply with the signal indication displayed on Signal 31 and to approach the next signal, Signal 09, at medium speed, a violation of Rule 282, UCOR, Train No. 159, Trois Rivieres Subdivision, January 24, 1989.

The Union contends that the engineman having worked on this Trois Rivieres Subdivision for some eighteen to twenty years would also tend to give Conductor Gauthier a sense of security that the rules were being complied with.

The Union requests the removal of the discipline and the payment of all lost time.

The Company declined the Union's appeal.

FOR THE UNION:

(SGD) J. R. AUSTIN
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD) N. R. FOOT
FOR: GENERAL MANAGER, OPERATIONS & MAINTENANCE, IFS

There appeared on behalf of the Company:

H. B. Butterworth – Assistant Supervisor, Labour Relations, Toronto
F. O. Peters – Labour Relations Officer, Montreal
G. W. McBurney – Supervisor, Labour Relations, Toronto

And on behalf of the Union:

J. N. deTilly – Local Chairperson, Trois Rivieres

J. Austin	– General Chairperson, Toronto
G. Blake	– Local Chairperson, Smiths Falls
S. Keene	– Secretary, GCA, London
B. Marcolini	– Vice-President, Ottawa
G. Wynne	– General Chairman, B of LE, Smiths Falls

AWARD OF THE ARBITRATOR

In the Arbitrator's view the material does disclose an error on the part of Conductor Gauthier. A close examination of the facts, however, reveals that his mistake took place over a period of moments as the RDC unit to which he was assigned approached Signal 0.9. The record reveals that Mr. Gauthier complied in all respects with procedures, including the calling of the signals. It also does not appear disputed that he saw the engineer reducing speed at the point when he left the area of the operator's cabin to tend to passengers who were about to detrain at the next station.

I am satisfied, in all of the circumstances, that the greater responsibility for what transpired was that of the engineman. While Mr. Gauthier may have erred in trusting to the engineman's judgement, the fact that he had other duties to turn his attention to as the train approached the signals can fairly be taken in mitigation in assessing the appropriate penalty. On the whole the Arbitrator is not satisfied that the Company was justified in either removing Mr. Gauthier from service pending an investigation of the engineman's overspeeding nor in assessing demerits against him for this infraction. Given the factual circumstances involved, and the length of the grievor's service, I am satisfied that the substitution of a letter of reprimand on the grievor's record in respect of this incident would have the desired rehabilitative effect.

For the foregoing reasons the grievance is allowed, in part. The grievor shall have the demerits assessed against him removed from his record, with a substitution therefore of a written reprimand, to be issued in the terms deemed appropriate by the Company. Mr. Gauthier shall also be compensated for all wages and benefits lost by reason of his being held out of service.

November 17, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR