

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1970

Heard at Montreal, 15 November 1989

Concerning

CANADIAN PACIFIC LIMITED

And

UNITED TRANSPORTATION UNION

DISPUTE:

Reinstatement of Conductor M.R. Eldridge, Quebec Division.

JOINT STATEMENT OF ISSUE:

On August 22, 1988, Conductor Eldridge was working as Conductor on Extra 4227 Extra West. Upon arrival with his train at Beaconsfield, Mr. Eldridge allowed his entire train to pass a train order signal indicating stop, before being stopped on the radio by the Operator at Beaconsfield.

After some heated discussion with Trainmaster Lavalle, Mr. Eldridge yarded his train and was thereafter held out of service pending an investigation.

Subsequent to an investigation into this incident on August 24, 1988, Conductor Eldridge was dismissed "for passing a stop train order signal without obtaining a clearance, a violation of Rules 34, 401A, 402, 403, 248 Paragraphs 1 and 2, and 221 Paragraph 7, UCOR; for passing stop hand signals, a violation of Rules 12(a) and 12(h), UCOR; for failing to maintain the prescribed interval between your train and a preceding train, a violation of Rule 91, UCOR; for failing to exchange the required signals and radio communication with the crew at the rear of your train, a violation of Rule 90A, UCOR, and Item 6.1, Section 2, Form CS44; for failing to ensure the required whistle signals were sounded, a violation of Rules 14 and 29, UCOR; and for use of foul and abusive language towards a Company officer, an act of insubordination, Extra 4227 West, Beaconsfield, Mile 10.05 Vaudreuil Subdivision, August 22, 1988."

The Union contends that the discipline was too severe and has requested that it be reduced in order to allow Mr. Eldridge back into Company service pursuant to the exception contained in the last sentence of Article 39(c) step 2.

The Company has declined the Union's request.

FOR THE UNION:

(SGD) J. R. AUSTIN
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD) E. S. CAVANAUGH
GENERAL MANAGER, OPERATION & MAINTENANCE, IFS

There appeared on behalf of the Company:

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

And on behalf of the Union:

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

AWARD OF THE ARBITRATOR

On the basis of the material filed the Arbitrator is satisfied that, while the grievor did violate the rules, as described in the joint statement of issue, there are mitigating circumstances which justify a reduction in penalty. It does not appear disputed that, although his train did pass the stop order signal at Beaconsfield, it did so in unusual circumstances. Due to repairs being carried on in the area, the grievor's train was travelling westward on the eastward track. While this kind of movement does occur, it is apparently not common for a conductor to be faced with a semaphore stop train order signal of the kind which confronted the crew in the instant case. Indeed, it does not appear disputed that both Conductor Eldridge and the two trainmen on his crew, both of whom were travelling in the caboose, were of the opinion that the semaphore signal was addressed to movements occupying the westward track, and not the eastward track on which they were travelling in a westward direction. That interpretation was plainly wrong, and resulted in a violation of the UCOR for which discipline is admittedly warranted.

Having regard to the mitigating circumstances, I am satisfied that the discharge of the grievor was excessive in the circumstances, and that for rehabilitative purposes a lengthy suspension would correspond sufficiently to the seriousness of the infraction disclosed. The grievance is therefore allowed in part. Mr. Eldridge shall be reinstated forthwith into his employment without loss of seniority, and without compensation for wages and benefits lost.

November 17, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR