

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1981

Heard at Montreal, Thursday 14 December 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Appeal the 35 demerit marks and the resultant discharge, account accumulation of 65 demerits, assessed to the record of S.P. Greenwood, Yard Foreman, Sarnia, Ontario, for a violation of UCOR 105 on 3 May 1989.

JOINT STATEMENT OF ISSUE:

On May 3, 1989, the grievor reported for duty as the Yard Foreman on the 1330 CIL yard assignment. At approximately 1400 the grievor's train departed the "C" Yard at Sarnia and headed south along the St. Clair River Industrial Spur destined for the CIL plant at Courtright. At approximately 1415 the grievor's yard assignment was involved in a head-on collision with another yard assignment, the 0900 Roustabout.

An investigation into the accident determined that the grievor's train, the 1330 CIL yard assignment, had failed to comply with Rule 105 of the Uniform Code of Operating Rules, which requires trains or engines using other than a main track to proceed at restricted speed (a speed which permits stopping within half the range of vision).

The grievor was assessed 35 demerit marks for his responsibility in the accident. In addition, the grievor was discharged for accumulation of demerits as his record then stood at 65 demerit marks.

The Union has appealed the severity of the discipline and the resultant discharge on the grounds that the grievor's degree of responsibility was well as his long service and good discipline record should be considered as mitigating factors. The Union therefore requests the grievor be reinstated without loss of wages, seniority or benefits.

The Company disagrees.

FOR THE UNION:

(SGD) W. G. SCARROW
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) J. B. BART
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. B. Bart	– Manager, Labour Relations, Montreal
S. F. McConville	– Labour Relations Officer, Montreal
M. Hughes	– Labour Relations Officer, Montreal
M. Lachance	– Trainmaster, Sarnia
J. Krawec	– Trainmaster, Toronto
H. Moxam	– Master Mechanic, Sarnia
B. Olson	– Manager, Labour Relations, Toronto

And on behalf of the Union:

W. G. Scarrow	– General Chairperson, Sarnia
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F. Garant – Vice-General Chairperson, Montreal
 K. W. Crowell – Vice-General Chairperson, Sarnia
 S. P. Greenwood – Grievor

AWARD OF THE ARBITRATOR

I am satisfied on the basis of the material before me that Yard Foreman Greenwood failed in the discharge of his duty as the person responsible for the 1330 CIL Yard Assignment on May 3, 1989. It is common ground that yard movements proceeding on the St. Clair River Industrial Spur, where the grievor's train was operating, must proceed in compliance with UCOR 105, a rule requiring trains to proceed at restricted speed, which means a speed which permits them to stop within one-half their range of vision. Movements on an industrial spur on this kind are not under the direction of a dispatcher. Therefore, subject to Rule 105, trains in yard service are free to move on the spur line, and obviously do so in the knowledge that other train movements have the same right. It is therefore essential that they proceed with vigilance, and in a manner consistent with UCOR 105.

As the train under the grievor's direction proceeded southwards on the St. Clair River Industrial Spur, at approximately 1415 hours, it approached a sharp curve which turned at a right angle westward. Yard Foreman Greenwood was then seated on the left side of the locomotive, with his vision of the curve obstructed by the forward hood of the unit. Yard Helper J.D. Hill was seated on the same side, in the forward seat, directly in front of the grievor. Locomotive Engineer T.D. Moore was on the west side of the unit, at the controls, with a clear view of the westward curve.

According to the statements given by both the grievor and Engineman Moore, the latter two employees were engaged in conversation with the yard helper in an effort to familiarize him with the spur, and in particular with the curve upon which they were about to enter. It appears that during the course of that conversation Locomotive Engineer Moore looked out of his side of the cab and saw the 0900 Roustabout, another yard movement into which they were about to collide. He shouted to his crew mates that they were about to collide and that they should jump clear. Mr. Moore and Mr. Greenwood did so, although Mr. Hill did not.

The trains collided some 77 feet north of Mileage 2.0 on the spur. The force of the impact was considerable, as the locomotive of the grievor's train climbed the booster unit which was at the head end of the 0900 Roustabout. In doing so the grievor's locomotive, CN 7234 ruptured its fuel tank and burst into flames, toppling onto its side in the ditch. Fourteen following cars were also spilled onto their sides. The overall damage to equipment was in excess of 1.5 million dollars. Physical injuries were sustained by Yard Helper Hill, including a fractured right leg and a fractured left arm. He also suffered a partial memory loss. The grievor also sustained a back injury which has caused him to remain unable to work, in receipt of Workers' Compensation benefits, to the present time.

The thrust of the Union's position is that the greater responsibility for the collision rests with the engineman, and that the assessment of thirty-five demerits against Mr. Greenwood is excessive. The record reveals that Locomotive Engineer Moore was assessed forty demerits while Yard Helper Hill was assessed twenty-five demerits for their respective degree of responsibility for the collision. It does not appear disputed before me that the responsibility of Yard Foreman Greenwood for the movement of his train was no less than that of the engineman. Not unlike the conductor of a train in road service, the yard foreman is under an obligation to ensure that the movement under his direction complies with all speed limits and operating rules.

In the instant case there is reason to conclude that the grievor failed in that obligation. The material establishes that the crew of the 0900 Roustabout did see Mr. Greenwood's train as it entered the curve, and was able to stop in sufficient time to avoid a collision. It does not appear disputed that it was standing still when it was struck by the locomotive of the grievor's train. While it may be that Mr. Greenwood was seated on the blind side of the curve as his engine approached it, it was his obligation to ensure that his train was proceeding at a safe speed, having regard to all of the conditions at hand, including the approaching curve. He cannot shield himself from responsibility by asserting that the engineman had a better view of the curve than himself, particularly to the extent that his obligations included ensuring that both the engineman and the yard helper remained fully vigilant as to the movement of their train. While Mr. Greenwood maintains that he in fact asked the engineman to see whether the approaching curve was clear, the statement of the engineman does not corroborate that claim. On the whole I am satisfied that Mr. Greenwood did not adequately monitor the speed of his train as it approached the curve, and did not exercise sufficient vigilance in respect of compliance with Rule 105, either by ensuring that the engineman kept a sufficient

lookout, or by himself moving to a position that would provide him with his own view of the approaching curve. In considering the relative discipline of the grievor and the engineman, moreover, it may be noted that in any event the Company did assess a greater number of demerits against Mr. Moore.

The only issue of substance in this case is the appropriate measure of discipline. The grievor's twelve years of prior service are a factor to be weighed, but they do not bring him within the concept of "long service", or at least the same degree of long service as has generally been reflected in prior awards of this Office. In the Arbitrator's view it is significant that the grievor's record stood at thirty demerits at the time of this incident. The demerit marks on his record were assessed as a result of a collision which occurred on May 31, 1988, also while Mr. Greenwood was working as Yard Foreman. It appears that on that occasion Mr. Greenwood allowed his movement to proceed blindly into a yard track at an unsafe speed, without sufficient information by way of radio communication from his yard helper. As a result, the movement under his control struck stationary cars, causing substantial damage to the engine and another rail car.

In the Arbitrator's view direct responsibility for two costly collisions within the span of a year is a factor more aggravating than mitigating in the assessment of discipline in a circumstance such as this. On May 3, 1989 Mr. Greenwood knew, or reasonably should have known, that his train was approaching a curve in circumstances where observance of UCOR Rule 105 was essential if collision with another movement was to be avoided. He obviously failed to ensure that that rule was respected, either by his own efforts or by the actions of the crew under his direction. The result of his negligence was a serious collision which took a substantial toll both in terms of personal injuries and economic loss to the Company. In my view the shared responsibility of Locomotive Engineer Moore does little in mitigation. In this respect this case is not unlike that disclosed in **CROA 1285**. In that case the assessment of thirty demerit marks against a yard foreman for a violation of Rule 105, resulting in his discharge, was sustained, notwithstanding the shared responsibility of the locomotive engineer.

In the instant case, having particular regard to the grievor's involvement in a prior collision, I am unable to conclude that the assessment of thirty-five demerits was not within the appropriate range of discipline. In the absence of any compelling mitigating factors, I can see no justification to reverse the decision of the Company.

For the foregoing reasons the grievance must be dismissed.

December 15, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR