

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2202

Heard at Montreal, Tuesday, 12 November 1991

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**UNITED TRANSPORTATION UNION**

### **DISPUTE:**

Appeal against discipline assessed to the records of Brakemen D.K. Decevito and W. Bozowskyi effective January 5, 1988.

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

On January 5, 1988, the grievors were employed as brakemen on Extra 9628 West (Train 335) between Hornepayne and Geraldton. At Longlac, Extra 9628 West entered the siding via the east end power switch and performed some work. Extra 9628 West departed for Longlac Junction via the west end of the siding. In the process, it passed by signal 1005S and ran through the dual control switch at mileage 100.5, Caramat Subdivision (Longlac West). Both Decevito and Bozowskyi were in the lead engine at the time.

The grievors were each assessed 35 demerit marks effective January 5, 1988 for "Responsibility in connection with the violation of UCOR Rule 292 at Signal 1005S, Longlac West Caramat Subdivision, January 5th 1988, while employed as Brakemen on Extra 9628 West (Train 335)."

The Union contends the discipline assessed was too severe and should be reduced.

The Company disagrees.

### **FOR THE UNION:**

**(SGD.) T. G. HODGES**  
GENERAL CHAIRPERSON

### **FOR THE COMPANY:**

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

There appeared on behalf of the Company:

D. L. Brodie	– System Labour Relations Officer, Montreal
D. W. Coughlin	– Manager, Labour Relations, Montreal
M. S. Hughes	– System Labour Relations Officer, Montreal
J. P. Krawec	– Transportation Officer, S.O.D., Toronto
R. A. Morris	– Manager Standards & Quality Control, Signals & Communications, Montreal
J. Vaasjo	– Regional Labour Relations Officer, Toronto

And on behalf of the Union:

R. A. Beatty	– Local Chairman, Hornepayne
T. G. Hodges	– General Chairman, Fort Erie
M. Gregotski	– Vice-General Chairman, Fort Erie

### **AWARD OF THE ARBITRATOR**

The material before the Arbitrator establishes a number of mitigating factors in relation to the events of January 5, 1988. Firstly, it is common ground that Signal 1005S did not show a stop signal as contemplated in Rule 292. While the upper aspect of the signal was functioning, and did show a red

indication, the light bulb in the lower aspect was burned out. The evidence of the grievors is that the lower aspect appeared to give a green indication, which caused them to conclude that they were approaching a slow clear signal. In fact, however, no signal was emanating from the lower light.

Subsequent tests taken by the Company lend a degree of support to the evidence of the grievors. In a report dated January 13, 1988 Trainmaster J.P. Krawec conducted a test simulating the conditions at Signal 1005S, although it appears that he was travelling on a highrail car, rather than in a locomotive. After confirming that for a time it appeared that the bottom aspect of the signal was not illuminated, Trainmaster Krawec goes on to report, "From a point 4-½ pole lengths east of the signal, it was noted the bottom aspect took on a slightly green tinge ...". He goes on to relate that the green colour was visible for a distance of sixty-six feet which, as the Company submits, would correspond to approximately six seconds of travel time as the grievors' train moved over the road in question. The evidence further relates that the crew had been in radio contact with the rail traffic controller moments before the signal became visible, and had been told that he was having difficulty lining the switch from the siding to the main line. However, the record of that conversation suggests that the final statement of the dispatcher might well have left the crew with the impression that the problem had been resolved. While at 12:56:04 the dispatcher told the crew over the radio that he would have to "play around with the switch for a while", shortly thereafter, at 12:56:23 he stated to them "I was just saying the switch at the west end won't lock up there so I had to switch it around a couple of times there." On its face the second statement could reasonably be interpreted as an indication that the problem which the dispatcher had been experiencing had been resolved. That, coupled with the evidence, which the Arbitrator accepts, that at some point the crew saw what appeared to be a slow clear signal because of the glare of the sun in the lower aspect of the signal, discloses that what transpired was not a willful or careless violation of Rule 292 on the part of the grievors.

In the instant case the burden of proof is upon the Company. It must establish, on the balance of probabilities, that the grievors knew, or reasonably should have known, that Signal 1005S at Longlac was in an inoperable condition which would have required them to stop in the face of an imperfectly displayed signal, as contemplated by UCOR Rule 27. On the whole, and having particular regard to the Company's own investigation conducted in similar circumstances, there is substantial reason to believe that the grievors saw what appeared to be a signal indicating a red aspect over a green aspect at the time in question. Such a signal would, moreover, have been arguably consistent with their understanding based on their last verbal communication with the dispatcher. Even accepting the evidence of the grievors, however, there is reason to conclude that they were deserving of some discipline, even though their error was not as great as the Company would have it. Plainly, notwithstanding any radio communications from the dispatcher, their first duty was to observe and obey the signal. The evidence of the Company leaves substantial doubt that a train crew in the position of the grievor's should not, at some point, have appreciated that Signal 1005S had an unusual or irregular appearance. While I accept that they saw what they took to be a slow clear signal, I am also persuaded that more sustained and careful observation would have alerted them to the fact that no light was burning in the lower aspect, causing them to stop their train's movement. There was, in the circumstances, a degree of inattention on their part which contributed to the rule violation which occurred.

For the foregoing reasons the grievance is allowed in part. The discipline assessed against Brakemen Decevitto and Bozowskyi shall therefore be reduced to fifteen demerits.

November 15, 1991

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