

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2230

Heard at Montreal, Tuesday, 11 February 1992

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

The assessment of a 90-day suspension to Mr. D. Stock and 40 demerit marks to Mr. H. Chubby for violating U.C.O.R. Rule 292 on March 13, 1990.

JOINT STATEMENT OF ISSUE:

Messrs. D. Stock and H. Chubby were the first and second locomotive engineers respectively operating Train No. 36 from Ottawa to Montreal on March 13, 1990.

At Delisle, Mileage 1.8 on the Alexandria Subdivision, a signal indicating stop was complied with. The train dispatcher was contacted and informed of the stop signal whereupon he advised the locomotive engineers that an authority to pass the signal, a 264, would be issued.

There is a specific process to be followed in the handling of a 264; however, prior to the completion of the process, Train No. 36 proceeded past the stop signal.

It is the Brotherhood's position that given the nature of the rule violation, the discipline was too severe.

It is the Corporation's position that the discipline was warranted.

FOR THE BROTHERHOOD:

FOR THE CORPORATION:

(SGD.) C. HAMILTON

GENERAL CHAIRMAN

(SGD.) C. C. MUGGERIDGE

DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

K. W. Taylor – Senior Officer, Labour Relations, Montreal
D. Fisher – Senior Officer, Labour Relations, Montreal

And on behalf of the Brotherhood:

C. Hamilton – General Chairman, Kingston
R. Bourgoin – General Chairman, Quebec

AWARD OF THE ARBITRATOR

The facts pertinent to this grievance are not disputed. While operating Train No. 36 from Ottawa to Montreal on March 13, 1990, Locomotive Engineers D. Stock and H. Chubby encountered a stop signal at Milage 1.8 on the Alexandria Subdivision. They stopped their train at the signal and immediately communicated with the train dispatcher to obtain an authority to pass the signal, pursuant to Rule 264 of the UCOR which provides as follows:

264 When a train or engine is stopped by a signal indicating STOP and no conflicting movement is evident:

- (a) A member of the crew must immediately communicate with the train dispatcher, stating his name, occupation, location and train or engine number.
- (b) If there is no conflicting movement, the train dispatcher may authorize the train or engine to pass the signal, but before doing so must provide protection against all opposing movements. The train or engine so authorized must move at restricted speed to the next signal, and be governed by Rule 104A at spring switches, Rule 104B at dual control switches, and Rule 672 at automatic interlockings. (c)

Instructions received from the train dispatcher must be in writing and repeated before being acted on, and train dispatcher must make the proper record immediately.

Locomotive Engineer Chubby, who was then acting as the second engineer on Train 36, conducted the radio communication with the dispatcher, while First Engineer Stock remained at the controls. In compliance with Rule 264(c), Mr. Chubby received and copied the instructions to proceed given by the dispatcher, and duly repeated them back to the train dispatcher, as required. It is common ground that, although not clearly expressed within the language of the rule, the final step of the communication between the train and the dispatcher is for the dispatcher to acknowledge receipt of the locomotive engineer's repeat of the message, confirming the time and the dispatcher's initials, prior to the train proceeding.

The material discloses, beyond controversy, that while Mr. Chubby was in the process of receiving the final communication from the dispatcher, having just repeated the instruction as required by Rule 264(c), and before the time and final confirmation was communicated verbally by the dispatcher, Mr. Stock commenced the movement of the train past the signal at Mileage 1.8. The movement was detected by the dispatcher who immediately ordered the train to stop, releasing it to proceed only after he had confirmed the time of the authorizing communication, in accordance with the normal practice.

Although Rule 264(c) makes no mention of the requirement for the dispatcher to declare the time of the communication and his own identity as the concluding step of the repeat process, the Brotherhood does not dispute that, for the purposes of this grievance, there was a technical violation of Rule 292 in that Locomotive Engineer Stock engaged the movement of his locomotive prior to the confirmation of the time by the dispatcher, in a manner contrary to the normal practice. It submits, however, that the circumstances are mitigating, in two respects. Firstly, the Brotherhood argues that the violation of Rule 292 disclosed is more technical than real, in that Locomotive Engineer Stock had clearly heard both the authorization of the dispatcher to proceed, as well as the repeat of that authorization by Mr. Chubby prior to setting his train in motion. There was, in other words, no willful or reckless disregard of the substance of Rule 292 or Rule 264, but, rather, a minor departure from the procedural practice. Secondly, it submits that the responsibility of Mr. Chubby is simply not disclosed on the facts. The Brotherhood's representative stresses that Mr. Chubby was in the process of completing the communication with the dispatcher, and was not in control of the locomotive, when, on his own, Locomotive Engineer Stock commenced the forward movement of the train. It does not appear disputed that in all likelihood Mr. Chubby had his head down, while in the process of registering the confirmation of the Rule 264 authorization, and would not have been in a position to notice the forward movement of the train, or to prevent it.

In the Arbitrator's view the position advanced on behalf on Locomotive Engineer Chubby by the Brotherhood is compelling, on the facts as disclosed. It is well established that Mr. Chubby, as one of the two locomotive engineers assigned to Train No. 36, was responsible for compliance with the requirements of the Uniform Code of Operating Rules and would, technically, have been in violation of Rule 292 and the established procedure respecting Rule 264. However, the circumstances are mitigating as regards his involvement. It is clear that he did not have the knowledge, nor, for all practical purposes, the means to know, that a violation of the rules was either about to take place or was

in the course of taking place. At all material times, on the evidence before the Arbitrator, Locomotive Engineer Chubby was carrying out his responsibilities as the second locomotive engineer, in full compliance with the rules. Given that he had no responsibility for the initiative taken by Locomotive Engineer Stock, nor any practical ability to detect or prevent Mr. Stock's actions, it appears to the Arbitrator to be out of keeping with the corrective principles of industrial relations discipline to assess any penalty against Locomotive Engineer Chubby in the circumstances disclosed. He was, very simply, not at fault and cannot be found to have committed any act which was deserving of correction by the application of discipline. For these reasons the Arbitrator sustains the position advanced by the Brotherhood with respect to the discipline assessed against Mr. Chubby.

I have greater difficulty, however, with respect to the discipline as applied to Locomotive Engineer Stock. Rule 292 and the respect of a stop signal is, as the Corporation submits, a cornerstone rule of train movement, the violation of which is among the most serious of operating infractions. Consequently, the procedures which attach to Rule 292 and the exceptions provided for through Rule 264, must be given the utmost respect. There is no dispute, on the material before me, that locomotive engineers in the service of the Corporation have consistently operated on the understanding that they are not to proceed in accordance with a Rule 264 instruction, against a red signal, until the appropriate authorization is fully communicated by the dispatcher, up to and including the noting of the time and identity of the dispatcher. In the circumstances, there is no reason disclosed in the evidence to justify the disregard by Mr. Stock of that practice.

The record of Mr. Stock gives the Arbitrator particular pause in the circumstances of this case. In 1984 he was assessed 30 demerits for passing a stop signal in contravention of Rule 292, and incurred discipline on two other occasions. In the result, at the time of the incident in question his record stood at 25 demerits. Against that background, the Arbitrator is not prepared to conclude that the suspension of 90 days assessed by the Corporation was inappropriate. For the foregoing reasons the grievance, as regards Mr. Stock, is dismissed.

For the reasons related above, however, the grievance of Mr. Chubby is allowed. The demerits assessed against his record shall be removed forthwith.

February 14, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR