

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2356

Heard at Montreal, Wednesday, 14 April 1993

concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

The dismissal of Yardman/Trainman S. Rochette of Montreal Quebec.

JOINT STATEMENT OF ISSUE:

On Sunday, July 14, 1991, Mr. Rochette was making a reverse movement with a draft of passenger cars from Central Station to Point St. Charles in Montreal.

During that reverse movement, Mr. Rochette accepted a track signal not governing the track on which his movement was proceeding, which resulted in his movement passing a red signal by some 4 car lengths.

As a result, following an investigation into this incident, Mr. Rochette was dismissed from CP Rail train service for the violation of a number of C.R.O.R. rules as well as Special Instructions 1.2 Timetable Footnotes, St. Hyacinthe Subdivision, CN Timetable number 66 at Signal 312-RA.

The Union progressed the dismissal as being too severe discipline based on, among other grounds, Mr. Rochette's belief that he was disciplined due to his union position. The Union requested that Mr. Rochette be reimbursed for all of his lost earnings.

The Company declined the Union's request to reinstate Mr. Rochette.

FOR THE UNION:

(SGD.) J. R. AUSTIN
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) M. G. MUDIE
GENERAL MANAGER, OPERATIONS & MAINTENANCE, IFS

There appeared on behalf of the Company:

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|---------------------|--------------------------------------|
| M. Senécal-Tremblay | – Counsel, Montreal |
| R. Hunt | – Labour Relations Officer, Montreal |
| J. McLean | – Manager, Labour Relations, Toronto |
| B. Scott | – Labour Relations Officer, Montreal |
| B. Yaendel | – Assistant Superintendent, Montreal |

And on behalf of the Union:

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|-------------|-----------------------------|
| M. Church | – Counsel, Toronto |
| D. Warren | – General Chairman, Toronto |
| C. Beaulieu | – Witness |
| S. Rochette | – Grievor |

AWARD OF THE ARBITRATOR

It is not disputed that the grievor, Trainman S. Rochette, violated a number of rules and special instructions when the draft train which he was involved in moving from Central Station to Pointe St. Charles in Montreal, proceeded past signal 312-RA, which exhibited a stop indication, for a distance of some four car lengths. While the errors committed by the grievor involve a number of infractions of several rules and instructions, the gravamen of his offense resides in his violation of CROR rule 429, formerly UCOR rule 292.

The circumstances of this case, and the submissions of the parties, have caused the arbitrator to review the prior awards of this Office with respect to violations of UCOR 292 and CROR 429. As the cases disclose, allowing a train movement to proceed through a stop signal has always been viewed as a serious offense. It has not, however, been treated by employers as meriting automatic dismissal. In the earliest years of this Office the most common response of a violation of Rule 292 appears to have been a lengthy suspension, generally in the order of six months, although not always necessarily of that length. The suspensions recorded seem to have varied between forty-five days and nine months. (See **CROA 48, 168, 270, 303, 388, 439, 467, & 725.**) For a time the tendency was to assess demerits for violations of UCOR 292. Generally, the demerits assessed fall within the high range, between thirty and fifty-five demerits. (See **CROA 350, 374, 743, 1031, 1116, 1306, 1328 [nullified at arbitration], 1372, 1674, 1696, 1710 & 1778.**) A small number of the cases involving the assessment of demerits also resulted in discharge for the overall accumulation of demerits.

Outright discharge for a violation of Rule 292, generally coupled with other rules violations, is revealed in a relatively limited number of cases (see **CROA 474, 681, 745, 1479, 1505, 1677 & 2124 [reduced to a suspension]**). In each of the cases involving an imposition of outright discharge by the company there has been some aggravating factor. For example, in **CROA 681** and **2124** the employee discharged for passing a stop signal had committed his second offence against the rule. In **CROA 745** a locomotive engineer was dismissed where a violation of Rule 292 was found to also involve a violation of Rule G, resulting in a collision and two fatalities. Serious collisions were also involved in **CROA 1479** and **1677**, while in **CROA 1504** the discharge of the locomotive engineer was motivated, in part, by his falsification of an employee statement intended to evade his responsibility. More recently, employers have again used the assessment of suspensions for violations of rule 292 of the UCOR and rule 429 of the CROR (See, e.g., **CROA 2126, 2161, & 2267.**)

When regard is had to the standards used by employers within the railway industry, as reflected in the records of this Office over several decades, the actions of the grievor, while serious, do not disclose the degree of gravity found in those prior cases where discharge was assessed as the penalty. That said, the evidence does reveal a serious incident which could well have resulted in a collision.

The material before the Arbitrator discloses that the draft train was manned by the grievor, as well as a locomotive engineer, and was moving eastward in a reverse direction, with the grievor stationed at the forward end of the movement. He instructed the locomotive engineer to stop at signal 312-RA, and the draft movement came to rest some forty to fifty feet to the west of that location. Upon proceeding ahead on foot, Mr. Rochette observed that a number of switches appeared to be lined to allow the movement of the draft from the south track onto the north track, immediately prior to entering the Victoria Bridge. He also observed signal 324-R, which controlled the north track, and not the track upon which his movement was placed. Seeing it display a Medium To Stop indication, Trainman Rochette erroneously concluded that the indication was intended for his movement. He therefore instructed Locomotive Engineer Bergamin to proceed slowly in an eastward direction. Before the draft advanced four car lengths, the grievor realized his error and called for the movement to stop. It appears that others had realized the error simultaneously, as an Amtrack passenger train moving in the same direction on the north track, on what would have been a side-collision course, also came to a stop. It is common ground that upon realizing what he had done, Mr. Rochette committed further rules infractions, most particularly in instructing his locomotive engineer to pull back to a point west of signal 312-RA, without any authorization from the rail traffic controller to do so.

Upon a careful review of the evidence, the Arbitrator is satisfied that Trainman Rochette committed a serious error of judgement which was deserving of a substantial degree of discipline. While he erred in a number of ways, the most significant errors committed involved the violation of CROR Rule 429 and the failure of the grievor to take appropriate action, in keeping with the rules and instructions, once he had realized his error. In the circumstances of the case at hand, the Arbitrator is satisfied that the failure to initiate flagging and other protection of his movement after it had transgressed the limits of signal 312-RA, and instructing the locomotive engineer to draw the movement

back without notifying or seeking the authorization of the train dispatcher must be viewed as aggravating factors. In my view, however, they are not so aggravating, having regard to the pattern of prior discipline in the industry for similar occurrences, to sustain the discharge of an employee in the position of Trainman Rochette.

The grievor is an employee of some seven years' service, whose disciplinary record was clear at the time of the incident. If his actions had involved only the passing the stop signal, and the immediate stopping of his train thereafter, precedent would suggest the assessment of a substantial number of demerits or a suspension to have been an appropriate disciplinary response. In light of the aggravating actions pursued by the grievor, it is not inappropriate to view the whole of his actions as deserving of a serious sanction, up to and including a significant period of suspension.

In all of the circumstances the Arbitrator deems it appropriate to substitute a penalty short of discharge, which is the equivalent of a substantial suspension. The Arbitrator therefore directs that the grievor be reinstated into his employment, without compensation and without loss of seniority, with the period between his discharge and his reinstatement to be recorded upon his record as a suspension for the infractions listed in the notice provided to Mr. Rochette dated August 12, 1991.

April 16, 1993

(Sgd.) MICHEL G. PICHER
ARBITRATOR