

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2468

Heard in Montreal, Wednesday, 13 April 1994

concerning

**CANADIAN PACIFIC LIMITED**

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS  
[BROTHERHOOD OF LOCOMOTIVE ENGINEERS]**

**EX PARTE**

### **DISPUTE:**

Dismissal of Locomotive Engineer R.C. Lefebvre, London, Ontario.

### **BROTHERHOOD'S STATEMENT OF ISSUE**

On May 28, 1992, in Toronto Yard, Locomotive Engineer R.C. Lefebvre and fellow crew members Conductor Gill and Trainman Emery attempted to execute a three man crew running switch. Trainman Emery lost his footing and accidentally fell between the engine and tank cars, resulting in the fatal mishap.

Following the investigation, Mr. Lefebvre was returned to active service for approximately three weeks before he was dismissed on a number of CROR rule violations.

The Brotherhood appealed the grievor's dismissal and requested that he be reinstated with full compensation for lost wages.

The Company declined the Brotherhood's request.

### **FOR THE BROTHERHOOD:**

**(SGD.) R. S. MCKENNA**  
**GENERAL CHAIRMAN**

There appeared on behalf of the Company:

J. S. McLean	– Manager, Labour Relations, Toronto
H. B. Butterworth	– Labour Relations Officer, Toronto
B. M. Duffy	– Manager Training, Toronto
P. Chappel	– Assistant Superintendent, IFS, Toronto
M. Bertrand	– Superintendent, IFS, Toronto
R. N. Hunt	– Labour Relations Officer, Montreal
M. G. DeGirolamo	– Director, Industrial Relations,

And on behalf of the Brotherhood:

R. S. McKenna	– General Chairman, Ottawa
T. G. Hucker	– International Vice-President, Ottawa
W. B. Foster	– Vice-General Chairman, London
J. Houston	– Chairman, Ontario Legislative Board, Sarnia
D. A. Warren	– General Chairperson, UTU, Toronto
D Ellickson	– Observer
B. Gill	– Observer

R. C. Lefebvre – Grievor

### **AWARD OF THE ARBITRATOR**

The grievor was discharged on July 13, 1992, following an investigation into an incident which resulted in the death of Trainperson G.W. Emery on May 28, 1992 in the Toronto Yard. Mr. Lefebvre was then the locomotive engineer of a crew also comprising Mr. Emery and Conductor B.R. Gill. The record discloses that while the crew was in the process of moving three locomotive units from the diesel shop to the location of their train, they encountered a tank car which was blocking their way. After consultation with Train Yard Coordinator R.P. Venn, the crew undertook two attempts at spotting the tank car into a separate lead, by means of a moving switch. During the course of the second attempt, at a point in time when Mr. Emery was to detrain from the moving locomotive to climb aboard the tank car to operate its hand brake, he accidentally fell across the track in the path of the moving tank car, and was killed.

The movements of the crew's power units and the mechanics of the running switch which they attempted to execute, as well as the various rules which related to their actions, are reviewed in substantial detail in **CROA 2469**, and need not be repeated. As noted in that award, while Conductor Gill and Locomotive Engineer Lefebvre were both discharged following a disciplinary investigation, the merits of their respective cases must be assessed individually, in light of all pertinent factors.

As noted in **CROA 2469**, the crew was subject to a bulletin dated February 28, 1992 which prohibited employees from entraining or detraining any moving equipment. Prior to that bulletin, (and to the present time west of Thunder Bay) employees involved in switching operations were authorized to get on and off moving equipment in keeping with Form 300-2, Section 1, Item 5(f). At the time of the incident in question that rule required that such movements not be undertaken at speeds in excess of 6 m.p.h.

As noted in **CROA 2469** the Arbitrator has difficulty faulting the crew absolutely for attempting the running switch in a manner that appeared to disregard the bulletin of February 28, 1992, insofar as their method was generally consistent with Form 300-2, Section 1 Item 5(f). The detraining of the locomotive unit by the trainperson, and his climbing aboard the car being spotted, while both the locomotive and the car were in motion, was the only method by which the crew members had been trained by the Company for such an operation. In the result, the equities would suggest crew's election to perform the operation in a manner generally consistent with Form 300-2, was to some degree understandable, even if not correct. That said, however, and assuming that Locomotive Engineer Lefebvre's crew had a colourable excuse for following the procedures contemplated in Form 300-2, Section 1, Item 5(f), the facts revealed in evidence give substantial cause for concern.

It is not disputed that in executing a running switch, within the contemplation of the rule found in Form 300-2, when a crew member is compelled to entrain or detrain moving equipment, it is not to be moving at speeds in excess of 6 m.p.h. This was clearly known to Locomotive Engineer Lefebvre at the time in question. Unfortunately, the evidence discloses that during the course of both attempts to execute the running switch, he operated his locomotive units at a speed of 11.7 m.p.h., nearly double the permissible speed. Further, the locomotive units accelerated immediately after the uncoupling of the tank car which is the precise moment Mr. Emery was to step to the ground from the side ladder of the locomotive where he was stationed.

Additionally, the record discloses that after the first attempt, at a point in time when Mr. Emery was on the ladder, Mr. Lefebvre brought the units to a stop by "plugging" or reversing the traction motors, an action which was clearly improper in the circumstances and which, by his own admission, would cause a jerking motion which could "... cause someone to fall off." It should be stressed that the plugging of the traction motors did not, in the case at hand, cause Mr. Emery to be thrown from the locomotive as it was performed during the first attempt at uncoupling the tank car. That evidence does, however, speak to the questionable standard of care being exercised by Locomotive Engineer Lefebvre in the circumstances.

What the evidence does disclose, unequivocally, is that during the course of both attempts at the moving switch Locomotive Engineer Lefebvre, who was then alone in the cab of the locomotive, allowed his units to achieve speeds nearly double those permissible under Form 300-2, Section 1, Item 5(f) at precisely the point in time when the trainperson was required to step to the ground from the locomotive and attempt to entrain the moving tank car.

When regard is had to the totality of the evidence, even accepting the evidence of the Brotherhood that it was not inappropriate to entrain and detrain the trainperson during the course of the operation, the unavoidable conclusion is that Locomotive Engineer Lefebvre knowingly committed a number of rules violations touching directly on the safety of the operation being performed. Of greatest concern, for the purposes of the instant grievance, is the overspeed of his units at the very point in time Trainperson Emery was to detrain.

It should be stressed that there is no evidence before the Arbitrator to confirm a causal link between any action of Mr. Lefebvre and the unfortunate accident which transpired. At the time of the switch Mr. Emery was standing in an awkward position on the locomotive's side ladder, partially encumbered by a large radio attached to his upper body and, as was later disclosed, with a quantity of grease or oil on the soles of his boots. In the result, it cannot be known with any certainty whether the accident would not have occurred had Mr. Lefebvre run his units at permissible speeds. It is difficult, however, to counter the suggestion of the Company's representative to the effect that undertaking the uncoupling operation at a slower speed and over a longer stretch of track would have conduced to greater safety.

Mr. Lefebvre's prior disciplinary record is not impressive. Significantly, he was dismissed in January of 1990 for a serious rules infraction, involving the passing of a stop signal on the Galt Subdivision. Although he was reinstated into his employment in January of 1991, on compassionate grounds and without compensation, his effective suspension for the period of a year for a serious rules violation is a matter of substantial concern. So too is the evidence of the operation of the locomotive units within the Toronto Yard during the course of the tour of duty leading up to the accident on May 28, 1992. The evidence before the Arbitrator discloses, beyond controversy, that for significant periods of time during the movement of the locomotive units from the diesel shop to the point of the attempted switching of the tank car, Mr. Lefebvre operated his units at speeds substantially in excess of the limits permissible within the yard. While the speed limit within the yard is 15 m.p.h., the Q-Tron data reveals that the grievor's units reached speeds in excess of 20 m.p.h. while traveling westward on track A4. Although the grievor sought to explain the overspeed on the basis that the locomotive units that he was operating tend to sway at speeds between 11 and 15 m.p.h., he was unable to give any good explanation as to why he would not have slowed his units to avoid that problem, rather than violating yard speed limits.

On the whole, the evidence discloses to the Arbitrator a course of conduct by Mr. Lefebvre suggestive of a questionable standard of care on his part during the course of the movement of his units from the time they left the diesel shop until the point of the accident. In light of his prior dismissal and subsequent compassionate reinstatement, following a serious rules violation in 1990, the Arbitrator finds the record devoid of compelling mitigating factors which would justify a substitution of penalty in the case at hand. It is clear from the evidence before me that during the course of events leading up to the death of Trainperson Emery, in a number of particulars which were entirely under his own control, Mr. Lefebvre resorted to procedures and speeds which were plainly contrary to all applicable rules, and in disregard of the standard of care to be applied in the execution of a running switch, even following the method by which his crew had been trained to execute that operation.

For all of the foregoing reasons the Arbitrator is satisfied that the Company was justified in its decision to terminate the employment of Locomotive Engineer Lefebvre. In the absence of any compelling mitigating factors, that decision must be sustained. The grievance is therefore dismissed.

15 April 1994

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