

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2624

Heard in Calgary, Wednesday, 10 May 1995

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)**

DISPUTE:

Appeal the 150 day suspension assessed Locomotive Engineer R. G. Comparelli of Edmonton, Alberta for violation of Canadian Rail Operating Rule (CROR) 94 at mileage 106.9 Vegreville Subdivision on January 2, 1992.

JOINT STATEMENT OF ISSUE:

On January 2, 1992 Mr. Comparelli was employed as locomotive engineer on Extra 5304 West on the Vegreville Subdivision. While proceeding through cautionary limits at Scotford between mileage 104.8 and mileage 108.0, the train was placed into emergency and collided with a yard movement at mileage 106.9.

Following an investigation into the incident, Mr. Comparelli was assessed a 150 day suspension for: "Violation of CROR Rule 94 on 25 January 1992 while working as Locomotive Engineer on Extra West at Mileage 106.9 Vegreville Subdivision."

The Brotherhood has appealed the discipline on the grounds that it is too severe.

The Company has declined the appeal.

FOR THE COUNCIL:

(SGD.) M. W. SIMPSON
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) B. LAIDLAW
FOR: SENIOR VICE-PRESIDENT, WESTERN CANADA

There appeared on behalf of the Company:

B. Laidlaw – Labour Relations Officer, Edmonton
R. Reny – Labour Relations Officer, Edmonton
A. Wagner – Alberta District Transportation

And on behalf of the Council:

M. W. Simpson – Vice-General Chairman, Saskatoon
D. Shewchuk – Vice-General Chairman, Saskatoon

AWARD OF THE ARBITRATOR

The evidence discloses that the train movement being operated under the supervision of Locomotive Engineer Comparelli on January 2, 1992 entered cautionary limits at Scotford at a speed in excess of 50 mph. At mileage 106.9 the grievor's train collided with cars from Train 413 which were entering the main line from the Fort Saskatchewan Industrial Spur. The evidence further indicates that the grievor was in conversation with the crew of Train 413 some eight minutes previous, and was aware of their presence in the vicinity. Further, it is common ground that the initial suspension of 150 days assessed against Locomotive Engineer Comparelli was subsequently reduced to a ninety day suspension, coupled with a period of retraining and education.

The Council submits that in the circumstances the grievor and his crew did not violate CROR rule 94 which provides, in part, as follows:

94 (c) A third class, fourth class, extra train or engine must operate at caution speed within cautionary limits, unless the main track is seen to be clear. An ABS signal indication does not relieve the crew of a third class, fourth class, extra train or engine from the requirement of operation at caution speed.

The Council's representative submits that the grievor and his brakeperson were deceived by an optical illusion created by the presence of black and white tanker cars on the track ahead of them, and that they believed that the main track was in fact clear. On that basis he argues that the rule was not violated, as the track was "seen to be clear" by the crew, albeit in error.

The Arbitrator has difficulty accepting that submission. As the evidence reflects, members of the grievor's crew did in fact see the cars of the train which they struck, although they made a visual error as to their precise location. While it is not necessary, for the purposes of the instant case, to deal exhaustively with the meaning of the proviso found within rule 94(c), I am satisfied that it cannot fairly be concluded, on the facts at hand, that the main track was "seen to be clear" in the sense contemplated by the rule. Moreover, the fact that the grievor was aware of the presence of Train 413 in the general vicinity was a further basis for particular caution in the circumstances.

The Arbitrator agrees with the Council that the grievor's seventeen years' service, apparently without any discipline, is a mitigating factor which can properly be taken into account. There are, however, aggravating factors in the case at hand, including the damage to equipment and minor personal injuries which resulted from the collision. On the whole, I am satisfied that the decision of the Company to reduce the grievor's suspension to ninety days, which is in the appropriate range of penalty for an infraction of this kind, was appropriate and should not be disturbed. Nor should the working conditions imposed by the Company, which have since expired, be disturbed. There is little reason to doubt that the grievor is an employee of previous good service who, although deserving of serious discipline, can be expected to return to the high standards of his prior service. For these reasons the grievance must be dismissed.

May 18, 1995

(signed) MICHEL G. PICHER
ARBITRATOR