

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2843

Heard in Montreal, Wednesday, 9 April 1997

concerning

ST. LAWRENCE & HUDSON RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]**

DISPUTE:

Appeal of the assessment of ten (10) demerit marks to Conductor Martin Bangert.

JOINT STATEMENT OF ISSUE:

Conductor Martin Bangert was assessed ten (10) demerits on August 17, 1995 for:

“... failing to comply with the requirements of Ontario South Division Monthly Bulletin Item 1.0, regarding Operating Bulletin No. 180, resulting in the subsequent delay to train 403-13 at Toronto Yard on August 12, 1995.”

The Union's position is that Operating Bulletin No. 180 recommends that the documentation should be reviewed only after the employee is actually on the engine. The Union also argued that Mr. Bangert should not be subject to discipline because, in their opinion, he insisted on working in a safe manner.

The Union requested that the ten (10) demerit marks be expunged from Mr. Bangert's record.

The Company declined the Union's request.

FOR THE COUNCIL:

(SGD.) D. A. WARREN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) G. CHEHOWY
FOR: DISTRICT GENERAL MANAGER

There appeared on behalf of the Company:

H. B. Butterworth	– Labour Relations Officer, Toronto
M. Senécal-Tremblay	– Counsel, Montreal
G. Chehowy	– Manager, Labour Relations, Toronto

And on behalf of the Council:

P. Sadick	– Counsel, Montreal
D. A. Warren	– General Chairman, Toronto
M. Bangert	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator discloses that on the evening of August 12, 1995 Conductor Bangert was assigned to Train 403/13 at Toronto Yard. It appears that at approximately 2315 hours the grievor was advised that his power was ready at the shop. He nevertheless remained in the General Yard Office, apparently being concerned about irregularities in the paper work being provided to him in relation to his train. It is common ground that a change in procedure was brought into effect by Bulletin No. 180, dated July 24, 1995, some three weeks prior to the incident giving rise to this grievance. In accordance with Bulletin No. 180, conductors were instructed to review the documents provided to them by the General Yard Office only after boarding their locomotive unit. Bulletin No. 180 reads as follows:

Train Documentation Packages at Toronto Yard

At the end of June an initiative was started at Toronto Yard where the documentation for each train is placed into one envelope by the Outward Clerk. A checklist, indicating that all documents are present, is stapled to the front of each envelope and is signed by the Clerk responsible.

Each Train Documents Envelope contains:

- All applicable GBO's (3 copies of each)
- Waybills
- Form 125
- Daily Operating Bulletin (3 copies)
- CN Daily Operating Bulletin (if required - 3 copies)
- Form 3900 OCS/CTC Clearance (8 copies)
- 9PLAN Consist (4 copies)
- Tonnage Profile (4 copies)
- Emergency Response Forms
- Crew Packs (3)

The purpose of this procedure is to reduce terminal detention time. Documents should [be] reviewed only after getting on the engines of the train.

It is not disputed that on the evening in question Conductor Bangert did not follow the procedure outlined above. It is common ground that there were irregularities in the paperwork which was provided to him, and that the envelope which he was handed was not signed by the clerk, and did not have attached to it a checklist indicating all documents as being present. Faced with those irregularities on the face of the envelope, Mr. Bangert determined to clarify the matter himself in the Yard Office. That occasioned a delay, by reason of which he did not arrive at the shop track until 2355 hours. The Company takes the position that, in light of the directions contained in Bulletin No. 180, Conductor Bangert should have taken the documentation as it was handed to him, proceeded directly to obtain his locomotive power, and to iron out any difficulties with respect to the documentation once he was aboard his locomotive unit.

The Arbitrator is satisfied that with respect to the procedure which should have been followed, the Company is obviously correct. There is, however, some ambiguity in the situation which Conductor Bangert faced on the evening in question, particularly in light of the fact that the procedure under Bulletin No. 180 was still relatively new. The new system appears to be premised upon a proper checklist, signed by the clerk, being attached to the envelope given to a train's conductor. There is no indication in the bulletin itself as to how a person might proceed if that checklist was itself missing.

The Union argues that the final paragraph of Bulletin No. 180, using the word "should" is something less than a mandatory direction to the members of a train crew. The Arbitrator cannot accept that argument. Plainly, the phrase "documents should be viewed only after getting on the engines" is clearly limiting, obviously indicating that the documents are not to be reviewed anywhere else, including the General Yard Office. Given the time-sensitive nature of railway operations, the grievor knew, or reasonably should have known, that it was his obligation to comply with the ultimate directive in Bulletin No. 180, and to take the documentation, such as it may have been, directly to the locomotive power before reviewing it for its adequacy.

In the circumstances, however, and in particular in light of the mitigating fact that Bulletin No. 180 was in its earliest stages of implementation, I am satisfied that this is an appropriate case for a substitution of penalty. In my view, given the circumstances, a written reprimand or caution would have been sufficient to bring to the grievor's attention the necessity of proceeding with dispatch to his locomotive power, and henceforth removing any issue of clarifying or correcting documentation from the confines of the General Yard Office. Such a reprimand would plainly be sufficient to put the grievor on notice that any recurrence of delay similar to that of August 12, 1995 would attract a more serious measure of discipline in the form of demerits.

The grievance is therefore allowed, in part. The Arbitrator directs that the Company remove the ten demerits assessed against Conductor Bangert, and substitute a written reprimand or caution.

April 12, 1997

(signed) MICHEL G. PICHER
ARBITRATOR