

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2852

Heard in Calgary, Wednesday, 14 May 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Appeal of fifteen (15) demerits assessed Locomotive Engineer N.D. Craig of Prince George, B.C. effective May 08, 1995.

JOINT STATEMENT OF ISSUE:

Mr. Craig was assessed fifteen (15) demerits for his responsibility respecting violation of C.R.O. Rule 115(a), which resulted in a collision between the 14:00 Huble Turn and a B.C. Rail movement, in track PG 91 at the BCR interchange Prince George on May 08, 1995.

It is the Brotherhood's position that the discipline assessed Mr. Craig was totally unwarranted and requests the discipline be expunged.

The Company has declined the Union's request.

FOR THE COUNCIL:

(SGD.) M. W. SIMPSON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. TORCHIA
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Van Cauwenbergh	– Labour Relations Officer, Edmonton
J. Torchia	– Manager, Labour Relations, Edmonton
S. Michaud	– Assistant Manager, Labour Relations, Edmonton
K. Morris	– Labour Relations Officer, Edmonton
S. Blackmore	– Labour Relations Officer, Edmonton
D. Lanthier	– Labour Relations Officer, Edmonton
J. Dixon	– Assistant Manager, Labour Relations, Edmonton

And on behalf of the Council:

D. J. Shewchuk	– Senior Vice-Chairman, Saskatoon
D. E. Brummund	– Vice-Chairman, Kamloops

AWARD OF THE ARBITRATOR

The material before the Arbitrator discloses that the grievor was assessed fifteen demerits following a collision which occurred in track PG91 at the BC Rail interchange at Prince George on May 8, 1995. The facts are not disputed. Part of the assignment of the grievor's train, the 1400 Huble Turn, was to proceed from Prince George to the BCR interchange with some forty-one cars, and to set off the twenty-seven rear most cars at the interchange. As the grievor and crew approached the interchange they proceeded eastward, observing that track PG91 was then clear, while the adjacent tracks, PG92 and PG93 contained cars. They therefore decided to push the cut of twenty-seven cars into track PG91.

The Council argues that Yard Foreman H.J. Savoie, Yard Helper D.W. Kowalchuk and Locomotive Engineer Craig were all of the view that the track would hold the twenty-seven cars, and that indeed they would all fit within the first portion of the track, which was a straight stretch, and would not extend beyond the leftward curve in track PG91, where visibility was obscured. With that understanding the grievor's train moved eastward down the main line with Mr. Craig and Mr. Savoie in the locomotive. When the movement cleared the east interchange switch Yard Helper Kowalchuk lined the switch into track PG 91 and then gave verbal instructions by radio to Locomotive Engineer Craig to push the twenty-seven cars into the track. Mr. Kowalchuk opted not to ride on the lead car, believing that he had a sufficient view of the track the cars would occupy. It is not disputed that as Mr. Kowalchuk gave successive car count instructions to Locomotive Engineer Craig, the cars in fact filled the straight and visible stretch of track PG91, and proceeded leftwards, into the curve out of Mr. Kowalchuk's sight. Unfortunately, unbeknownst to Mr. Kowalchuk a BC Rail assignment was also setting off cars into the other end of track PG91 and the two movements collided. As a result of the incident Yard Helper Kowalchuk was assessed fifteen demerits, Yard Foreman Savoie was assessed thirty demerits and Mr. Craig was assessed fifteen demerits for violation of CROR 115(a). The rule in question reads as follows:

115. PUSHING EQUIPMENT

(a) When equipment is pushed by an engine, a crew member must be on the leading car or on the ground, in a position to observe the track to be used and to give signals or instructions necessary to control the movement.

EXCEPTION: A crew member need not be so positioned when the portion of the track to be used is seen or known to be clear. However, the movement must not approach to within 100 feet of any public, private or farm crossing unless such crossings are protected as described in Rule 103 paragraph (b) or (g).

The submission of the Council in the case at hand is that no responsibility should be attributed to Locomotive Engineer Craig in the circumstances of this case. Its representative submits that all three members of the crew proceeded on the assumption, albeit incorrect, that the twenty-seven cars would be contained within the straight and visible stretch of track PG91. In that circumstance, the placement of Yard Helper Kowalchuk on the ground at the switch would have complied reasonably with rule 115(a). The Council's representative submits that it is only when that assumption proved to be incorrect that the crew ran afoul of the rule. He submits that that is a matter which could not be assessed by Locomotive Engineer Craig, from his position some forty cars away. The fault, he submits, was in the yard helper not instructing the locomotive engineer to stop his movement when it became evident that it would encroach beyond the curve, into an area which was not visible to the yard helper. In the circumstances, the Council submits that the locomotive engineer was not in a position, at any point in time, to do anything which could have avoided the collision which occurred. It submits that in the circumstances Mr. Craig should not be made liable for the error committed by the yard helper.

The Company rests its case, in part, on the fact that the crew appears to have made assumptions about track PG91 from the view of the track taken as the movement proceeded eastward on a parallel track, at which point there was no activity to be seen, and the entire track, including the portion beyond the curve, was seen to be clear. It stresses that the condition of the track at that time has no bearing on the application of the rule, which must apply at the precise time of the movement. It maintains that Mr. Craig understood the characteristics of the track, knew that the helper and foreman were not in a proper position to sufficiently observe the track and did not make sufficient attempts to confirm that the track was indeed clear, or that the yard helper was stationed on the lead car, before proceeding.

The statement of Yard Helper Kowalchuk discloses that track PG91 is straight for a distance of approximately fifteen to twenty cars on the east end, prior to commencing the left hand curve. He confirms that at the point of collision the cars of his own movement were out of view, around the curve, with his view partially blocked by cars in track PG92.

Conductor Savoie's statement relates that during the course of their eastward movement the crew observed that track PG91 was completely clear, and that no one was working on the west end of the interchange. On that basis, he relates that the crew decided that the twenty-seven cars would fit into PG91 adding "It was a collective decision of the crew." He further comments "We also believed that twenty-seven cars would not go around the curve in PG91."

The grievor's statement is somewhat contradictory as to the theory which he applied in respect of rule 115(a). At one point he makes the following statement: "With regard to rule 115, I believe the exception under brackets (a) covers our movement as we had just travelled the length of PG91 and "the portion of the track to be used was seen or known to be clear". When pressed as to the rule being more precisely related to the moment of the movement, Locomotive Engineer Craig conceded that he was aware that time was a pertinent factor. He then went on to state, in part: "I honestly felt that we quite likely would not reach the corner and therefore felt that the movement was consistent with safety as performed."

At first blush there is some appeal to the argument advanced by the Council's representative. If, in fact, the locomotive engineer proceeded entirely on an assumption that the straight and visible portion of the track would contain the count of twenty-seven cars, the suggestion that the incident was beyond the locomotive engineer's control might not be without some foundation. A close examination of the statements of Locomotive Engineer Craig, however, does not coincide entirely with the theory advanced by the Council's representative. As is evident from Locomotive Engineer Craig's statements, he erroneously believed that the earlier parallel travel of the length of track PG91, at which time it was seen to be clear, was in compliance with rule 115(a). Further, his statement that he believed the movement "quite likely" would not reach the curve suggests that he had something less than certainty in his own mind about that estimate. On the whole, therefore, the Arbitrator is compelled to conclude that the grievor did in fact misconstrue and misapply the operation of rule 115(a) in the circumstances which obtained in relation to the pushing of the twenty-seven cars into track PG91 on May 8, 1995. Given what appears to have been a degree of uncertainty on his part as to the ability of the cars to fit into the straight portion of track, he departed from the rule by failing to ensure that at least one member of the crew either rode the lead car or "walked" the movement to the curve and beyond.

In the result the Arbitrator is compelled to conclude that the Company did have cause to assess discipline against the grievor for the incident in question. In the circumstances I am satisfied that fifteen demerits falls within the appropriate range of discipline for the rule violation in which the grievor was involved. For these reasons the grievance is dismissed.

Dated at Montreal, May 30, 1997

(signed) MICHEL G. PICHER
ARBITRATOR