

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2910

Heard in Calgary, Wednesday, 12 November 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS

(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

DISPUTE:

Appeal the restriction to a position of yard helper for a period of six (6) months and time held out of service between June 10 and 16, 1995 to count as a suspension assessed Locomotive Engineer G.A. Bereska of Vancouver, B.C. for violation of CROR Rule 105, 12.2, GVT Operating Manual Item 3.1 and G.O.I. Section 6.1(4) which resulted in the collision on the North By-Pass Thornton Yard on June 10, 1995.

JOINT STATEMENT OF ISSUE:

On June 10, 1995 Mr. G.A. Bereska was employed as the locomotive engineer on the 06:00 Transfer Assignment. While making a reverse movement on the North by-pass track, the 06:00 transfer assignment collided with another assignment. Locomotive Engineer Bereska was assessed a six (6) month restriction to yard helper and time out of service to count as a suspension.

The Brotherhood has appealed the discipline based on the grounds that it is too severe and that Locomotive Engineer Bereska be compensated for the difference in wages while under restriction as well as all wages and benefits lost during the time held out of service from June 10-16, 1995.

The Company maintains that the discipline assessed to Mr. Bereska was appropriate given the seriousness of the violation and has declined the Brotherhood's request.

FOR THE COUNCIL:

(SGD.) D. J. SHEWCHUK
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. TORCHIA
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. VanCauwenbergh	– Labour Relations Officer, Edmonton
J. Torchia	– Manager, Labour Relations, Edmonton
J. Dixon	– Assistant Manager, Labour Relations, Edmonton
K. Morris	– Labour Relations Officer, Edmonton
S. Blackmore	– Labour Relations Officer, Edmonton

And on behalf of the Council:

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

AWARD OF THE ARBITRATOR

Upon a review of the material filed, the Arbitrator is satisfied that the Company has established that the grievor, Locomotive Engineer G.A. Bereska, did violate each of the rules in respect of which he has been disciplined. The evidence discloses that while making a reverse movement on the north by-pass track in Thornton Yard, on June 10, 1995, a movement which extended over a distance of a mile and one-half, operating three light engines, Locomotive Engineer Bereska and his workmate, Conductor J. Smith, caused their movement to become involved in a head-on collision with a yard movement, occasioning some two million dollars in damages to the five locomotive units involved.

The grievor's movement consisted of three locomotives moving in a reverse direction, with Locomotive Engineer Bereska in the rear unit, and Conductor Smith on the leading unit. It is not disputed that the grievor allowed his engines to travel in excess of the fifteen mile per hour speed limit, at times attaining twenty-two miles per hour. Most significantly, he did not remain in continuous radio communication with Conductor Smith, nor arrange for visual hand signals, to ensure vigilance with respect to the occupancy of the track ahead of them. The Arbitrator is compelled to the unfortunate conclusion that Locomotive Engineer Bereska did fail to observe the required speed limit, failed to ensure that his conductor was in the appropriate position on the leading locomotive so as to provide necessary signals in respect of the conditions ahead, and that he failed to make any effort to confirm the distance that his movement could safely operate, by not communicating with Conductor Smith for a period of some six minutes. Significantly, CROR rule 12.2 provides that communication is to be given as to the distance to travel from the person who occupies the front or controlling end of the movement, and that failing any further communication, the movement is to be stopped at one-half the distance of travel from the point of last instruction. The Arbitrator cannot accept the Council's suggestion that the grievor's movement was not a switching movement subject to that rule.

The real issue in this matter relates to the appropriate measure of discipline. While it is true that Locomotive Engineer Bereska is a long term employee with a positive prior disciplinary record, it is also well established that a first offence may be the basis for a severe measure of discipline, regard being had to all of the factors, including the seriousness of the infraction involved. Clearly, the facts of the instant case could have lead to far more tragic results, and thankfully only minor injuries were sustained by members of both crews. As noted above, there were substantial financial losses incurred by the Company. Moreover, as related above, the facts disclose a disturbing degree of carelessness on the part of both the locomotive engineer and the conductor. It is clear to the Arbitrator that the rules are conceived to ensure that each of the members of the crew bear some obligation to be vigilant that the other is performing his or her function in keeping with minimal standards of safe practice.

For that reason, the Arbitrator cannot accept the suggestion that in the instant case the greater degree of responsibility should be placed upon Conductor Smith. It appears clear that if Locomotive Engineer Bereska had complied with the rules, and in particular with those relating to the obligations respecting clear communication as to distances yet to travel, the collision would have been avoided. In the circumstances, the Arbitrator is not inclined to conclude that the grievor was unfairly disciplined by the assessment of a six month demotion to the position of yard helper, in addition to a suspension for the time held out of service pending the investigation, the identical discipline assessed to his fellow crew member, Conductor Smith.

For all of the foregoing reasons the grievance is dismissed.

November 25, 1997

(signed) MICHEL G. PICHER
ARBITRATOR