

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2912

Heard in Calgary, Thursday, 13 November 1997

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

Dismissal case of Conductor L.K. Boettger of Revelstoke, B.C., who was dismissed for an incident at Mile 119.9, Mountain Subdivision, October 1, 1995.

JOINT STATEMENT OF ISSUE:

On October 1, 1995, Mr. L.K. Boettger was the conductor on Extra 5807 West on the Mountain Subdivision when the train passed a signal indicating stop which resulted in a collision with an opposing train, Mile 119.9 Mountain Subdivision.

An investigation was held and Conductor Boettger was dismissed for a violation of CROR Rules 410, 429, 106 (a) and (d), Time Table No. 92 Mountain Subdivision Footnotes Item 4.1.

The Union appealed the dismissal and subsequently requested his reinstatement.

The Company denied the Union's request.

FOR THE COUNCIL:

(SGD.) J. KNOWLES
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. E. WEBB
FOR: DISTRICT GENERAL MANAGER

There appeared on behalf of the Company:

G. S. Seeney	– Manager, Labour Relations, Calgary
K. E. Webb	– Manager, Labour Relations, Calgary
R. V. Hampel	– Labour Relations Officer, Calgary
R. M. Smith	– Labour Relations Officer, Calgary
B. P. Scott	– Labour Relations Officer, Calgary

And on behalf of the Council:

M. Church	– Legal Counsel, Toronto
L. O. Schillaci	– General Chairperson, Calgary
B. L. McLafferty	– Vice-General Chairperson, Moose Jaw
J. K. Jeffries	– Vice-General Chairperson, Cranbrook
J. Knowles	– Vice-General Chairperson, Calgary
E. DeCredico	– Vice-General Chairperson, Nanaimo
D. H. Finnson	– Secretary, Saskatoon
L. Boettger	– Grievor

AWARD OF THE ARBITRATOR

The facts of this grievance are fully related in **CROA 2791**, a decision which concerned the grievance of Locomotive Engineer J.T. Taverna, who operated Extra 5807 West, together with Conductor Boettger. The following paragraph in the above noted case reflects the conclusion of the Arbitrator that Locomotive Engineer Taverna bore the primary responsibility for the failure to stop his train, resulting in the collision at mile 119.9 on the Mountain Subdivision on October 1, 1995:

In the result, I must find that the grievor was responsible for the loss of control of his train on the occasion of the head-on collision which occurred at Greeley on October 1, 1995. I am not presented with sufficient evidence to conclude that the events which transpired were beyond Locomotive Engineer Taverna's control. Specifically, I must conclude that he was negligent in not taking the necessary steps to control his train's movement when he knew, or reasonably should have known, that he was disoriented and unsure of his location as he approached an anticipated stop signal.

Upon a careful review of the material filed, the Arbitrator is satisfied that, while Conductor Boettger bore a substantial degree of responsibility for the incident, there are mitigating factors which distinguish his case. Firstly, the evidence discloses that on a number of occasions Locomotive Engineer Taverna operated his train overspeed. It is not denied that Conductor Boettger repeatedly reminded him that he was travelling in excess of permissible speeds, as a result of which the locomotive engineer adjusted the rate of speed of his train movement. It is also confirmed that Conductor Boettger did call the approach signal at Signal 1183S, and that he broadcast, as required, his location approaching the Greeley mile sign. Further, it is also established that on at least two occasions the grievor spoke with Locomotive Engineer Taverna to inquire as to whether he felt fit to continue operating his train, the second inquiry being in fact moments before the locomotive engineer operated his movement through the stop signal, when the train suddenly entered a fog-bound location.

The primary error in judgement committed by the grievor is his failure to have monitored more closely the speed at which the locomotive engineer was operating as the movement approached the stop indication at signal 1199S. It appears, however, that Conductor Boettger observed the locomotive engineer manipulating the brakes, and was under the clear impression that his train was in fact slowing, and was under the locomotive engineer's control. It also seems that, unbeknownst to the grievor, Mr. Taverna had in fact experienced some difficulty in handling the train because of its configuration of cars, including robot engines.

On the whole, the Arbitrator is satisfied that this is an appropriate case for a substitution of penalty, albeit one in which a serious degree of discipline is nevertheless appropriate. For the foregoing reasons the Arbitrator directs that the grievor be reinstated into his employment, forthwith, without compensation or benefits, and without loss of seniority. The time between the grievor's discharge and his reinstatement shall be noted as a suspension against his record, with his demerit standing to remain unchanged.

November 25, 1997

(signed) MICHEL G. PICHER
ARBITRATOR