

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3095

Heard in Montreal, Wednesday, 9 February 2000

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Appeal the discipline, twenty-five (25) demerits assessed to Locomotive Engineer F. Schultz for his responsibility in causing a side collision at Lynn Creek on September 23, 1998, failing to remain on duty at the scene of the collision and failing to comply with Company instructions in General Notice No. 032.

Appeal the discharge of Locomotive Engineer F. Schultz effective October 22, 1999 for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On September 23, 1998, Locomotive Engineer F. Schultz was assigned to the 14:00 Lynn Creek Yard assignment. While preparing to remove the empty grain cars from the Saskatchewan Wheat Pool elevator, the locomotive consist which Mr. Schultz was operating struck the side of a passing transfer movement.

On June 7, 1999, Locomotive Engineer Schultz provided an employee statement and was assessed twenty-five (25) demerits.

On October 22, 1999, as a result of this and subsequent incidents that are currently in dispute, Locomotive Engineer Schultz was discharged for accumulation of demerits.

It is the Brotherhood's position that Locomotive Engineer Schultz was not responsible for side collision and that the discipline assessed was unwarranted.

It is also the Brotherhood's position that the investigation into this incident was not conducted in a fair and impartial manner as specifically required by article 86 of collective agreement 1.2. The Brotherhood contends that Locomotive Engineer Schultz was deprived of reasonable notice of the allegations against him, which effectively denied him the protection of a fair and impartial hearing.

The Brotherhood has requested that the twenty-five (25) demerits assessed Locomotive Engineer Schultz be removed from his record and that he be reinstated into Company service with full compensation for all wages and benefits lost since October 22, 1999.

The Company disagrees and has declined the Brotherhood's appeal.

FOR THE COUNCIL:

(SGD.) M. W. SIMPSON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. RENY
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. Reny – Human Resources Associate – Pacific Division, Vancouver
R. K. MacDougall – Counsel, Montreal
S. Michaud – Business Partner – HR, Pacific Division, Edmonton

J. Vena – Superintendent, Operations, Vancouver
 R. Eisenman – Transportation Supervisor, Vancouver
 E. Storms – Operations Manager, Crew Management Centre, Edmonton

And on behalf of the Council:

B. McHolm – Counsel, Saskatoon
 D. J. Shewchuk – Sr. Vice-General Chairman, Saskatoon
 G. Hallé – Canadian Director, BLE, Ottawa
 R. E. Lee – Local Chairman, Vancouver
 F. Schultz – Grievor

AWARD OF THE ARBITRATOR

The material establishes, to the satisfaction of the Arbitrator, that Locomotive Engineer Schultz was responsible for causing a side collision at Lynn Creek on September 23, 1998. The record discloses that at the time in question his switching movement was immobilized while pulling some twenty empty grain cars on track 2, east of the Saskatchewan Wheat Pool elevator. He was instructed to suspend the movement of his train to allow another train, the Lynn Creek Transfer, to pass on an adjacent track. While Mr. Schultz' train was standing idle Yard Conductor K. Campbell instructed him to "stretch" the cars, a manoeuvre which required a short forward movement. Mr. Schultz proceeded forward approximately four car lengths, until the head end of his movement struck the passing train in a side collision. Contrary to rules, the grievor immediately left the scene, abandoning his locomotive unit and proceeding to book off sick and go home.

It is not disputed that the grievor's movement at the time in question was governed by rule 12.2 of the CROR. It reads as follows:

12.2 SWITCHING BY RADIO

When radio is used to control a switching movement, and after positive identification has been established, the following procedures are required:

- (i) direction in relation to the front of the controlling unit must be given in the initial instruction and from then on whenever the direction of the movement is to change;
- (ii) distance to travel must be given with each communication; and
- (iii) movement must be stopped at once if no further communication is received when the movement has travelled one-half the distance required by the last instruction.

Note: Doubt as to the meaning of an instruction or for whom it is intended must be regarded as a stop signal.

The Council submits that Locomotive Engineer Schultz relied upon the yard helper of his crew, Mr. C. Temple, to advise him as to the safe placement of the head end of his movement. In fact, however, Mr. Temple had removed himself some distance to perform a pull-by inspection of the passing train that Mr. Schultz eventually struck. Clearly there was no prior contact between Mr. Schultz and Yard Helper Temple to actively involve the yard helper in scrutinizing the forward progress of the grievor's train. For reasons he must best appreciate, Mr. Schultz simply advanced his train until it was stopped by the side collision with the Lynn Creek Transfer. It is clear to the Arbitrator that the grievor was negligent in so performing his duties, and that he cannot, in the circumstances, invoke any failure on the part of Yard Helper Temple who, to all appearances, was not alerted to the necessity of protecting the head end of the grievor's movement, and was in fact performing other work in relation to the passing transfer.

At a minimum, I am satisfied that it was incumbent upon Locomotive Engineer Schultz to establish direct contact with Yard Helper Temple before proceeding to move his train forward, to ensure that that forward movement could be accomplished safely. His failure to do so made him liable to discipline for both his rules violation and his failure to remain at the scene of the accident. Given the seriousness of these infractions, I am satisfied that the assessment of twenty-five demerits was within the appropriate range of discipline and should not be disturbed.

The grievance must therefore be dismissed.

February 12, 2000

(signed) MICHEL G. PICHER
ARBITRATOR