

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3257

Heard in Calgary, Wednesday, 15 May 2002

concerning

CANADIAN PACIFIC RAILWAY

and

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

DISPUTE:

On November 3, 1998, Locomotive Engineer D.B. Parker was issued 45 demerits for “failing to properly repeat radio instructions pertaining to your movement, for failing to properly change the operating cab of a multiple locomotive consist, for failing to perform proper locomotive brake tests and for failing to ensure that all persons in or about equipment being loaded or unloaded were notified and that loading or unloading devices were clear, prior to coupling equipment, resulting in damage to customer equipment; a violation of CROR Rule 106(d), 113(b), 123(c), General Operating Instructions Section 13, items 2.1 and 2.4, Section 15, Item 15.1(c) 0759 Ogden Park Industrial Assignment, September 13, 1998, and for deliberately providing false and misleading information during the formal investigation conducted on September 18, 1998, and October 16, 1998, Calgary, Alberta.”

JOINT STATEMENT OF ISSUE:

Locomotive Engineer Parker has 19 years of service and the Council has requested his reinstatement to Company service.

The Company has declined the Council’s request.

FOR THE COUNCIL:

(SGD.) D. C. CURTIS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) V. W. GRAHAM
GENERAL MANAGER, FIELD OPERATIONS

There appeared on behalf of the Company:

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|---------------|---------------------------------------|
| C. M. Graham | – Labour Relations Officer, Calgary |
| C. D. Carroll | – Director, Labour Relations, Calgary |
| J. C. Copping | – Manager, Labour Relations, Calgary |
| D. T. Cooke | – Manager, Labour Relations, Calgary |
| D. E. Guerin | – Labour Relations Officer, Calgary |
| M. Strauss | – Pulldown Coordinator, Calgary |

And on behalf of the Council:

- | | |
|--------------|-----------------------------------|
| J. Flegel | – Senior Vice-Chairman, Saskatoon |
| D. C. Curtis | – General Chairman, Calgary |
| D. Able | – Vice-Chairman, Medicine Hat |
| M. Lagerway | – Local Chairman, Calgary |

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond dispute, that the grievor was negligently responsible for his movement, which had entered the spur track in the Ogden industrial area, colliding with stationary cars at the loading ramp of Rubbermaid, a Company customer. The collision resulted in damage to the customer's ramp, and could have resulted in the injury to employees. Fortunately it did not.

On September 13, 1998 the grievor was the locomotive engineer aboard the Ogden Park Industrial assignment, also crewed by Yard Foreman James Misurelli and Yard Helper Jason Riddell. At one point during their assignment the grievor decided to change the controlling ends of his locomotive consist before switching in track EF-412 at the Rubbermaid facility. Having completed that change he stationed himself at the controls of the west end engine. He then responded to a radio signal from Yard Foreman Misurelli to begin the backward movement of his units. As the movement progressed eastward Yard Foreman Misurelli advised the grievor that it would be necessary to stop his movement short of coupling with cars standing on the spur. However, the grievor found himself unable to control his movement and stop short of the cars standing at the loading ramp.

It is clear on the material before the Arbitrator that the failure of the grievor's braking equipment was due to the change of controlling cabs. Mr. Parker did not observe the necessary operating rules which required him to perform a proper inspection and brake test following the change on the controlling cab. Further examination of the facts discloses that other rules violations occurred, including the failure to perform a proper and complete pre-departure locomotive inspection and non-compliance with rules pertaining to radio communication.

The severity of the incident is, in the Arbitrator's view, aggravated by the comportment of the grievor during the disciplinary investigation subsequently conducted by the Company. It is clear that at one point in his initial questioning on September 18, 1998 Locomotive Engineer Parker stated that he did perform a locomotive air brake test after changing ends. However, after the statement of Yard Foreman Misurelli taken on October 6, 1998 contained an admission that no brake test was performed after Locomotive Engineer Parker changed controlling ends of his locomotive consist, in a supplemental statement taken on October 16, Mr. Parker admitted that no such test had been made. It does not appear disputed that if the test had been properly done the collision, on the downhill spur, would have in all likelihood been avoided.

While the grievor has nineteen years of employment, his disciplinary record is far from exemplary. He had twenty demerits on his record at the time of the incident, and over the years of his service with the Company had been made the subject of discipline on many occasions, a number of them involving rules infractions. In all of the circumstances, including the grievor's failure of honesty, the Arbitrator can see no basis which would justify the reinstatement of Locomotive Engineer Parker.

The grievance must therefore be dismissed.

May 21, 2002

(signed) MICHEL G. PICHER
ARBITRATOR