

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3281

Heard in Montreal, Tuesday, 10 September, 2002

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Assessment of 60 demerits to Yard Helper G. Forbes resulting in his dismissal.

JOINT STATEMENT OF ISSUE:

On January 26, 2002 the grievor, Mr. Forbes, was assigned as the yard helper on the 0800 eastbound assignment at Sarnia, Ontario. As a result of a side collision the grievor was assessed 60 demerits resulting in his dismissal for accumulation of demerits.

The Union grieved the discipline assessed and the resulting dismissal on the grounds that the discipline is unwarranted and in any event too severe. The Union requested that the discipline be removed or in the alternative substantially reduced and that the grievor be returned to service without loss of seniority and compensated for all lost wages.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) R. A. BEATTY
GENERAL CHAIRPERSON

FOR THE COMPANY:

J. P. KRAWEC
MANAGER, HUMAN RESOURCES

There appeared on behalf of the Company:

J. P. Krawec	– Manager, Human Resources, Toronto
B. L. Olson	– Director, Human Resources, Toronto
A. A. Marquis	– Superintendent, Southern Ontario Zone, Sarnia
M. A. B. Brinkley	– General Superintendent, Sarnia

And on behalf of the Union:

R. A. Beatty	– General Chairperson, Sault Ste. Marie
G. Anderson	– Vice-General Chairman,
J. Robbins	– Vice-General Chairman,
G. Ethier	– Secretary,
R. Michaud	– Provincial Legislative Representative, Montreal
N. Beveridge	– Local Chairperson, Montreal
P. Vickers	– Vice-General Chairman, BLE
R. Caldwell	– Vice-General Chairman, BLE

AWARD OF THE ARBITRATOR

Upon a review of the evidence the Arbitrator is satisfied that the Company has not established that the grievor's actions on January 26, 2002 merit the assessment of sixty demerits and his discharge.

The evidence establishes that on the date in question the grievor was working as a yard helper, along with Yard Foreman Charlie Knight, operating what is referred to as the eastbound yard assignment at Sarnia, Ontario. Following a lunch break the grievor and his workmate returned to their locomotive. It was apparent that they then needed to contact the crew of another yard movement, the westbound yard assignment, to ensure that there would be no conflict of movement on a crossover track as they progressed forward. Mr. Knight instructed Mr. Forbes to contact the crew of the westbound assignment to clarify that it was safe to proceed. Mr. Forbes was then located in the cab of the yard locomotive, with Mr. Knight on the stairs of the unit, with no apparent view of the westbound movement which was ahead of them. While Mr. Forbes was in radio conversation with the yard foreman on the westbound assignment, Mr. Knight, who was then wearing the controlling belt pack, set the locomotive into forward motion. Within a period of some thirty seconds it became apparent to Mr. Forbes that the eastbound assignment was on a course which would result in a side collision with the westbound assignment. He then came out of the cab calling to Mr. Knight to "soak it". His actions were too late, however, and a side collision ensued, causing over \$50,000 in damage to the locomotives and tank cars involved.

Upon a review of the evidence the Arbitrator is satisfied that, as argued by the Union's representative, the proximate cause of the collision was the ill-advised decision of Yard Foreman Knight to initiate the forward movement of the locomotive before Mr. Forbes had completed his radio communication with the westbound assignment. The Union submits that what transpired was not something of Mr. Forbes' own making, and that he was effectively surprised by the fact that his locomotive was placed in motion, and sought as best he could to respond to a situation that unfolded rapidly and without warning.

There can be little doubt but that the movement of the grievor's locomotive was contrary to a number of operating rules, including CROR rules 104(k), 105 and 115, and GOI Section 8(12.1), as asserted by the Company. In the Arbitrator's view, the fundamental issue in the instant case is the degree of responsibility which should be attributed to Mr. Forbes, given the way the events unfolded. By his own admission, Mr. Knight commenced the forward movement of the locomotive unit without any confirmation from Mr. Forbes that it was safe to do so, and while Mr. Forbes was engaged in a radio conversation with the crew of the westbound assignment precisely for the purpose of determining whether it was safe to proceed.

It is against that background that the grievor asserted, during the course of his disciplinary investigation, that he did not believe that he had done anything wrong. Essentially, as he characterizes the events, he was surprised by the movement initiated by Mr. Knight, and being seated in the reverse position, did not have a view of the track ahead until it was too late to observe that the westbound assignment was occupying the crossover, and that a collision would ensue.

The Arbitrator agrees that the greater responsibility must be ascribed to Mr. Knight. By his own account, he appears to have looked in the direction of the westbound assignment and wrongly concluded that they were on their own lead. However, from the standpoint of the grievor, the Arbitrator has difficulty understanding his failure, for a period of something in excess of thirty seconds, to do anything at all when he obviously realized that his locomotive was in motion, without any of the normal precautions, such as having a person on the front point, and without first verifying that the switches ahead were lined for that movement. Even accepting that the grievor was surprised by Mr. Knight's action, it is clear that he had the opportunity, well before the collision, to tell Mr. Knight to stop the movement as he did not yet have confirmation of the status of the westbound assignment. He could also have stopped the forward momentum of the locomotive by utilizing an emergency stop button on his own belt pack, or alternatively by engaging an emergency braking device in the cab of the locomotive. The grievor's apparent indifference to the situation for the better part of thirty seconds was, I am satisfied, a negligent failure on his part which did, to a degree, contribute to the side collision which occurred.

The issue then becomes the appropriate measure of discipline in the circumstances. The grievor has eighteen years of service and a positive disciplinary record. His record was clear at the time of the incident resulting in his discharge, and in eighteen years of service he had only once been previously disciplined, by the assessment of fifteen demerits in 1999. Against that background I am satisfied that the discharge of Yard Helper Forbes was

excessive in the circumstances, and should have been recognized as such by the Company. I therefore deem it appropriate to direct the reinstatement of the grievor with a partial order of compensation.

The grievance is therefore allowed, in part. The Arbitrator directs that Mr. Forbes be reinstated into his employment, without loss of seniority and with compensation for the wages and benefits lost from the date of the termination of his employment to the date of his reinstatement, subject to a thirty day suspension. The sixty demerits assessed against his record shall be expunged, and a suspension of thirty days registered for the violation of operating rules resulting in the collision of January 26, 2002 at Sarnia.

September 13, 2002

(signed) MICHEL G. PICHER
ARBITRATOR