

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 4112

Heard in Edmonton, Tuesday, 12 June 2012

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE

Appeal of discharge of Conductor P. Iaccino.

JOINT STATEMENT OF ISSUE:

On March 30, 2010, Conductor Iaccino's train was involved in collision and derailment at KC Junction on the Mountain Subdivision. Following an investigation into this incident, Conductor Iaccino's employment was terminated.

The Union contends that Conductor Iaccino's dismissal is unwarranted and excessive in all of the circumstances, including significant mitigating factors evident in this matter. The Union further contends that the Company is unable to establish a nexus between Conductor Iaccino's cellular phone usage and his train passing signal 370N.

The Union requests that Conductor Iaccino be reinstated without loss of seniority and benefits and that he be made whole for all lost earnings, with interest. In the alternative, the Union requests that the penalty be mitigated as the arbitrator sees fit.

The Company disagrees and denies the Union's request.

FOR THE UNION:

FOR THE COMPANY

(SGD) D. OLSON

(SGD) M. THOMPSON

GENERAL CHAIRMAN

FOR: MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Burke – Labour Relations Officer, Calgary
M. Thompson – Manager, Labour Relations, Calgary
G. Fish – Deputy Chief, Canadian Operations, CP Police Service (Ret'd)
G. Wilson – Vice-President, Environment and Regulatory Affairs, Calgary

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
D. Able	– General Chairman, Calgary
D. Fulton	– Vice-General Chairman, Calgary
D. Finnson	– Vice-President, TCRC, Calgary
W. Thacker	– Local Chairman, Revelstoke
J. Kiengersky	– Local Chairman, Revelstoke
P. Iaccino	– Grievor

AWARD OF THE ARBITRATOR

The material before me confirms that the grievor and his working partner, Locomotive Engineer Derosier, were responsible for the largest collision and derailment caused solely by the error of Company employees in many years. Their failure to observe a stop signal at KC Junction on the Mountain Subdivision on March 3, 2010 caused their movement to make a broadside collision with another train which resulted in \$4.3M in damages.

On March 3, 2010 the grievor and Locomotive Engineer were operating train 300-02 eastward from Revelstoke to Field, BC. Their train is described as being comprised of 112 empty hopper cars and 2 head end locomotives, with a total weight 3,475 tons and a length of 6,756 feet. Their train was routed onto the north main track leading to signal 370N at Mile 37.0, in anticipation of making a fueling stop some three miles beyond that point. At Mile 40.4 they encountered signal 404N which displayed an “Advance Clear to Stop” signal, an indication which told them that they would be required to stop beyond the next signal. They continued eastward to Signal 386N which displayed a “Clear to Stop” indication. That told them that they should operate their movement so as to stop at the next signal, being Signal 370N at KC Junction/Golden.

Unfortunately, the record discloses that their train made no effort to slow down, and that through both of the approach signals it continued at a consistent speed of 45 mph.

Meanwhile, ahead of them, westbound potash train 671 was operating with orders to proceed through the crossovers from the north track to the south track at KC Junction. Its movement in that direction, which involved effectively crossing over from the same track on which train 300-02 was travelling in the opposite direction, was protected by the red light stop indication at Signal 370N.

It is not disputed that there was no attempt to slow the grievor's train movement, even after it passed the Clear to Stop indication at Signal 386N. In fact, it continued operating at 45 mph until it was 422 feet short of Signal 370N. At that point an emergency brake application was initiated.

The result was devastating. As indicated above, train 671 was then crossing westward from the north track, the same track the grievor's train was operating on, onto the south track. The collision which resulted caused both locomotives and three hopper cars on the grievor's train to derail. Twenty-three loaded potash cars as well as train 671's mid-train remote locomotive power also derailed. Further damage occurred to another six potash cars which did not in fact derail. Additionally, a 4,500 litre propane tank which fuels switch heaters was punctured, causing a fire which destroyed a storage shed. Nearby residences and businesses were evacuated as a result of the collision. In terms of environmental damage 3,260 gallons of diesel fuel were spilled

from the second locomotive unit on train 300-02. Six hundred tons of potash were lost and a total of 1,457 tons of potash and contaminated soil had to be excavated and sent for disposal. That is all in addition to the damage to the tracks and switches at a key Company location which, in the result, was subjected to a 36 hour shutdown.

The grievor and Locomotive Engineer Derosier both stated during the subsequent Company investigation that they properly called the two approach signals leading to signal 370N. However the grievor also acknowledged that during the course of his tour of duty he had been involved in both sending and receiving text messages on his personal cell phone. He stated that there were fourteen such messages in total. However a subsequent police investigation, which secured by warrant the grievor's telephone records, revealed that he had in fact sent and received a total of twenty-seven text messages, one of which included a graphic photograph. While the last text message was one sent by the grievor some ten minutes prior to the collision, that message was in the form of a question. The reply to that question came in a text message received by the grievor's telephone shortly after the collision.

It is common ground that shortly before the collision the grievor was in radio communication with S&C Signal Maintainer Ted Hunter. Mr. Hunter was located approximately eight miles west of KC Junction/Golden at Mile 44.9, at the location of a newly installed hot box detector. Mr. Hunter radioed the crew on train 300-02 to tell them to disregard a voice message from that hot box detector, as it was not in fact in official service. Shortly after that message, while the grievor and his locomotive

engineer were approaching the restrictive signals, Mr. Hunter radioed them a second message indicating that the detector had in fact identified several warm wheels on one of the cars in their consist, suggesting that they might want to inspect that car when they next stopped, which would be the stop for fuelling shortly beyond KC Junction.

During the course of his disciplinary investigation the grievor maintained that he had been distracted by the call from Mr. Hunter and was reviewing paper work related to identifying the precise location of the warm wheels which had been identified to him. That, the Union submits, was the reason the grievor was distracted from the train's obligation to come to a stop at Signal 370N. That explanation was apparently accepted by the Transport Safety Board of Canada, as reflected in its report of the collision, released as Railway Investigation Report R10V0038.

However, the Arbitrator has substantial difficulty with the explanation of events advanced by the grievor. I consider it significant that the grievor's train did not deviate from its 45 mph speed from the time it passed the Advance Clear to Stop signal until it was within some 400 feet of the stop signal 370N, a distance of close to three miles. That covers a substantially greater length of time than the two conversations with Mr. Hunter, the longest of which is said to have lasted forty seconds or less. Based on the length of the grievor's train and the hot box detector signals, I accept the Company's estimate that the head end of the grievor's train would have been at approximately mileage 38.0 when the conversation with Mr. Hunter ended, fully one mile from the stop signal.

Additionally, as noted above, the evidence now available through the police investigation confirms that the grievor had issued a text message which posed a question, a question in respect of which he was presumably awaiting an answer. Considering all of the evidence, I am not satisfied that the grievor's explanation justifies the disregard of the continuing high rate of speed of his train by both himself and his locomotive engineer through two advance warning signals and up to a point some four hundred feet from the stop signal at 370N. Even allowing for a degree of communication from Mr. Hunter as they approached their designated stop, Mr. Iaccino and his locomotive engineer remained under a priority obligation to stay alert to the signals they were encountering and to handle the speed of their train accordingly. Given what occurred, I find it difficult to believe, on the balance of probabilities, that in fact they called the signals as they claim to have done while nevertheless taking absolutely no steps to reduce the speed of their train. Lastly, I find it difficult to ascribe credibility to the grievor's explanations as a general matter. While he stated during the Company's investigation that he made and received some fourteen text messages during his tour of duty, the correct number, disclosed only after a police investigation secured his telephone records, was twenty-seven such messages. In the result, there is reason to doubt the veracity of the grievor's account and to conclude that he deliberately mischaracterized the events so as to reduce the degree of his own responsibility for what occurred.

Following the Company's investigation both the grievor and Locomotive Engineer Derosier were discharged. Locomotive Engineer Derosier did not grieve his discharge. In all of the circumstances, I am not persuaded that the discharge of the grievor, an employee of relatively short service, should be disturbed. I am satisfied, on the balance of probabilities, that even taking into account the fact that the S&C Maintainer made some communication to him during the course of his train's approach to KC Junction/Golden, the grievor was not prevented from exercising the necessary care and due diligence in the operation of his train. The fact that he subsequently was less than candid and accurate in relating the events leading to the unfortunate collision which occurred is an aggravating factor, when coupled with what was an abandonment of his responsibility for the speed and location of his train.

For the foregoing reasons the grievance must be dismissed.

June 15, 2012

MICHEL G. PICHER
ARBITRATOR