CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 482

Heard at Montreal, Tuesday, November 12th, 1974

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Dismissal of conductor M. Moreau.

JOINT STATEMENT OF ISSUE:

On July 4th, 1974 at approximately 13:10 hours, M. Moreau was conductor in charge of Work Extra 234 which collided with a grinding machine whose crew consisted of four men and a foreman, at mileage 97.65, Wacouna Subdivision, in Special Permanent Slow Order Territory, in violation of General Rule B of the Uniform Code of Operating Rules and Special Permanent Slow Order Instruction F-9 of Time Table No. 14.

Following investigation of the incident on July 8th, 1974, Mr. Moreau was dismissed from the Railway.

The Union contends that the discipline assessed was too severe. A grievance was filed. The Railway rejected same.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) J. H. BOURCIER (SGD.) F. LeBLANC

GENERAL CHAIRMAN SUPERVISOR – LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin – Counsel

F. LeBlanc – Supervisor, Labour Relations, Sept-Îles

T. Leger – Assistant Labour Relations, Sept-Îles

W. Adams – Trainmaster, Transportation, Sept-Îles

E. Trepanier – Road Foreman of Engines, Sept-Îles

And on behalf of the Union:

J. H. Bourcier – General Chairman, Sept-Îles

G. W. McDevitt – Vice-President, Ottawa

M. Moreau – Grievor

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AWARD OF THE ARBITRATOR

The grievor, who had been employed as a conductor for some three years, was discharged by the Company on July 11, 1974, following an incident which occurred on July 4, 1974.

On the day in question the grievor was conductor of Work Extra 234 which, at the material time, was northbound from Canatiche to Waco, where the crew intended to have lunch. Early in the day, Conductor Moreau and crew had proceeded southbound on the same track, were aware of and had observed the slow order signs affecting the area involved, and knew that there was a crew of welders working in the area of Mile 98.

For the northbound movement to have lunch, the grievor, the engineman and the other two members of the crew were all in the cab of light Unit 234. There were also four carmen permitted by the grievor (who had overall responsibility for the movement) to ride in the cab. While no particular rule was referred to in relation to this, and while the grievor stated that "at the time" he thought that was a safe practice, it seems to me to have been at least questionable to have allowed eight persons in the cab. In any event, it is clear that on the northbound trip the crew did not have the same degree of awareness of the signals governing the track as they had earlier in the day on the southbound movement. As a result neither the grievor the engineman nor the other crew members saw or obeyed a Special Restricted Speed Sign just north of Mile 97. It was known to the crew that welders were working in the area of Mile 98, and that restricted speeds were in effect, but no care seems to have been taken or concern felt. "At the last minute" the crew saw the Special Stop sign, but it was then too late, and the engine collided with and destroyed a grinding machine at Mile 96.65. The train came to a stop three or four car lengths beyond the point of impact.

Clearly, having observed the Special Advance Warning Sign, having travelled some distance without seeing the Special Restricted Speed sign and knowing that there was work being carried on in the area which they had passed through shortly before, each member of the crew ought to have been concerned about the possible necessity of stopping the train. There was some suggestion that one of the signs referred to, the Special Restricted Speed sign which none of the crew members saw, was not there. It was pointed out that the dispatcher refused permission to take the engine back so that that could be verified. In the statement of the Union representative at the investigation, however, the crew members did not walk back to check (it was a very short distance) because there was "*confusion de signaux*" between the grievor and the brakeman. There was no timely allegation that the signal was not in fact there.

It is clear to me that each of the crew members was guilty of misconduct and subject to discipline. In fact the engineman and the head-end brakeman were assessed fifteen demerits. The other brakeman was not disciplined at all. The grievor was dismissed. The Union's position is that the penalty imposed on the grievor was too severe, having regard to the circumstances of the incident, and having regard to the lenient penalties imposed on the others. The Company's position is that the discharge of the grievor was justified having regard to the incident and the grievor's record.

It is, as I have indicated, clear that the grievor was properly subject to some discipline over this incident. As was said in **Case No. 439**, the question of whether or not the discipline imposed in any case is justified or not is to be determined having regard to the nature and circumstances of the offence, the record of the employee, and any special circumstances including, it has been held, a consideration of the consistency of discipline as between employees in similar circumstances. On this latter point it may be observed that a penalty which might otherwise be thought unduly severe may be upheld where it is consistent with penalties imposed on the same line in other cases see, for example, **Case No. 467**.

In the instant case it may be thought that the other crew members were lightly dealt with. There is reason to distinguish between the responsibility of the engineman and the conductor on the one hand, and that of the trainmen on the other hand, in these cases. As between the engineman and the conductor, there may be some distinction to be drawn in terms of the nature of the conductor's overall responsibility, but that distinction would not account for the difference between fifteen demerit marks in one case and dismissal in the other. As to the grievor's record, it is true that there have been a number of entries of demerit marks during his career as a Conductor but the last of these was assessed in December, 1972, and from November, 1973 the grievor in fact had no demerits current against his record, which had been clear for nearly two years.

While the other employees seem to have had unblemished records I think it still cannot be said that the grievor's record, clear at the time in question, would serve to justify such a drastic distinction between his case and that of the others.

In my view, the grievance must succeed on both grounds advanced. While the grievor's failure to carry out his responsibilities properly would subject him to severe discipline, it would not, in this case, justify discharge. And it cannot be held to be justified when other employees whose responsibility in the matter is only somewhat less than his, are leniently treated. There is nevertheless, grounds for a distinction between the grievor's and the other cases. Rather than deal with the niceties of the demerit system, I would conclude that the grievor's record should show the same number of demerits as that imposed on the others, namely fifteen, but that these should be entered as of the date of his reinstatement. As I conclude that there was not just cause for the dismissal of the grievor, it is my award that he be reinstated in employment forthwith without loss of seniority. In the circumstances, however, I make no award of compensation.

(signed) J. F. W. WEATHERILL

ARBITRATOR