

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1943

Heard at Montreal, Wednesday, 13 September 1989

Concerning

### VIA RAIL CANADA INC.

And

### BROTHERHOOD OF LOCOMOTIVE ENGINEERS

#### **DISPUTE:**

The Brotherhood's appeal of the discipline assessed to the record of Locomotive Engineer D.G. Swales of Truro, Nova Scotia.

#### **JOINT STATEMENT OF ISSUE:**

Locomotive Engineer D.G. Swales was in charge of operating Train 603 from Port Hawkesbury to Truro over the Hopewell Subdivision on October 24, 1988. The train and engine crew of Train 603 neglected to obtain an additional MBS clearance authorizing them to proceed beyond Stellarton Station. Consequently, Train 603 proceeded over 23 miles on the Hopewell Subdivision without proper authorization.

Following an investigation into this incident, Locomotive Engineer Swales was assessed a six-month suspension for violation of CN Time Table 93, System Special Instruction 2.0, Manual Block Systems.

The Brotherhood contends that the discipline assessed was too severe and should be reduced.

The Corporation disagrees with the Brotherhood's contention.

#### **FOR THE BROTHERHOOD:**

**(SGD) G. HALLÉ**  
GENERAL CHAIRMAN

#### **FOR THE CORPORATION:**

**(SGD) A. D. ANDREW**  
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

P. J. Thivierge – Acting Director, Labour Relations, Montreal  
D. L. Brodie – Labour Relations Officer, Montreal  
J. M. Lalonde – Director, Crew Management Centre, Montreal

And on behalf of the Brotherhood:

G. Hallé – General Chairman, Quebec  
J. D. Pickle – General Chairman, Sarnia

## **AWARD OF THE ARBITRATOR**

It is not disputed that the grievor's actions merited a serious measure of discipline. The issue is whether a six-month suspension was the appropriate disciplinary response in the circumstances. The Corporation cites several precedents of this Office to suggest that a six-month suspension is a fair penalty in such a case. With that submission the Arbitrator has some difficulty.

**CROA 1305**, which the Corporation pleads as an example supporting its view, would in fact suggest a contrary result. In that case a long-service locomotive engineer with a clear disciplinary record was found travelling thirteen miles from Toronto Union Station without a clearance or train orders. The discipline assessed in that case by the Company was forty-five demerit marks, and not a six-month suspension.

The employer further seeks to rely on **CROA 1854** as a close parallel. It is true that in that case the Arbitrator sustained the assessment of a six-month suspension against Locomotive Engineer Cress for wrongfully entering a restricted section of track. There are a number of factors which distinguish that case, however. Firstly, the record discloses that the grievor did not report the event, which involved a collision, for some sixteen hours. Secondly, his record was not clear. Significantly, he had previously been assessed thirty demerits for operating a train from Elgin to Belmont without authority, in violation of MBS rules. The six-month suspension, sustained by the Arbitrator, was therefore imposed partly on the basis that Locomotive Engineer Cress has committed a repeat offense.

Far from sustaining the Corporation's position, more closely examined, **CROA 1305** and **1854** are more consistent with the Brotherhood's assertion that while an infraction of the kind admitted by the grievor in the instant case is serious, in the case of a first offense involving an employee with a clear disciplinary record the assessment of a substantial number of demerits is the more appropriate sanction. That view is further supported by three other specific examples of similar infractions on the Great Lakes Region in 1987 and 1988 advanced by the Brotherhood. In these cases infractions similar to the grievor's were dealt with by the imposition of demerits.

In the instant case Locomotive Engineer Swales has fifteen years of service. Remarkably, during all of that time his record has remained without disciplinary blemish. Moreover, while the grievor's error cannot be excused, it is in some measure explained by the fact that the MBS system was relatively new on the Hopewell Subdivision, and it was uncommon for the grievor's train to be required to stop at Stellarton, instead of proceeding through to Truro. While that does not justify the grievor's error of judgement, it is a factor to be weighed in mitigation.

On the whole of the material before me, I am compelled to agree with the representative of the Brotherhood that the assessment of a six-month suspension in the instant case was unduly harsh, having particular regard to the treatment of other similar cases, as reviewed above. The Arbitrator therefore orders that an assessment of forty demerits be substituted for the discipline assessed against Mr. Swales, and that he be compensated in full for all wages and benefits lost.

September 15, 1989

**(Sgd.) MICHEL G. PICHER**  
**ARBITRATOR**