

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2292

Heard at Montreal, Thursday, 15 October 1992

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

The assessment of 90-day suspensions to Messrs. W.M. Copp and R.J. Tasker for violating C.R.O.R. Rule 42 on December 11, 1991.

JOINT STATEMENT OF ISSUE:

Messrs. Copp and Tasker were the locomotive engineers operating Train 40 from Toronto to Ottawa on December 11, 1991.

Daily Operating Bulletin (DOB) No. 1-345 effective 0001, Wednesday, December 11, 1991, item 15, contained a Rule 42 between miles 178 and 179. The Corporation alleges that the locomotive engineers failed to comply with Section C of C.R.O.R. Rule 42.

As a consequence of the foregoing, Messrs. Copp and Tasker were removed from service and attended disciplinary investigations on December 18, 1991, after which they were assessed 90-day suspensions.

It is the Brotherhood's position that these locomotive engineers complied with Section C of C.R.O.R. Rule 42 and were unjustly disciplined, that the discipline assessed be expunged from their record and that they be compensated for all losses.

The Corporation has declined the request.

FOR THE BROTHERHOOD:

(SGD.) C. HAMILTON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) C. C. MUGGERIDGE
DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

K. Taylor	– Senior Negotiator and Advisor, Labour Relations, Montreal
J. Ouellet	– Labour Relations Officer, Montreal
C. Rouleau	– Labour Relations Officer, Montreal
J-P Maheux	– Trainmaster, Montreal

And on behalf of the Brotherhood:

C. Hamilton	– General Chairman, Kingston
J. Tofflemire	– Local Chairman, Toronto
M. Copp	– Grievor

AWARD OF THE ARBITRATOR

The burden of proof in this case rests upon the Corporation. It must establish, on the balance of probabilities, that the violation of CROR Rule 42 did occur as alleged.

Upon a careful review of the evidence, the Arbitrator is left in substantial doubt with respect to that issue. The evidence confirms that the passenger movement being operated by the grievors was travelling at normal track speed when it approached the yellow flag in advance of the work limits, and could have stopped before the red flag. The evidence of the grievors is that they had received the track foreman's authorization to proceed, and that the authorization had been repeated and confirmed, before they reached the red flag signal.

The contrary evidence of Track Foreman McGinnis maintains that they did not. However, the material reveals that the account of events given by Mr. McGinnis in his first report of the incident to the Chief Dispatcher differs from that which he gave as time passed, up to and including the investigation. Significantly, his estimate of the time during which he was in radio communication with the grievors was estimated at approximately one minute at the time of his first report, and was reduced to half a minute or less in his final account of events.

In the Arbitrator's view this is a crucial aspect of the evidence. The probative value of Mr. McGinnis' evidence is also called into question in other ways. For example, he expressed no recollection of the grievors' locomotive having sounded its whistle or bell in accordance with the authorization which he gave. However, objective evidence taken from the event recorder on the locomotive, confirms that the whistle and bell were activated. Further uncertainty is raised by the delay of over two hours between the time of the incident and its disclosure to the Chief Dispatcher by Mr. McGinnis. Having regard to the totality of the evidence, the Arbitrator cannot conclude that the Corporation has discharged the burden of establishing that the grievors were in violation of CROR Rule 42 on December 11, 1991, as alleged. The grievance must therefore be allowed. The Arbitrator directs that Mr. Copp and Mr. Tasker be compensated for all wages and benefits lost as a result of their suspension, and that their records be amended accordingly.

October 16, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR