

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3096

Heard in Montreal, Thursday, 10 February 2000

concerning

**VIA RAIL CANADA INC.**

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**EX PARTE**

### **DISPUTE:**

Discipline assessed Locomotive Engineer Serge Thérien, Locomotive Engineer Alex Fioco and Student Locomotive Engineer François Vachon.

### **EX PARTE STATEMENT OF ISSUE:**

On January 19, 1999 Locomotive Engineer Serge Thérien, Locomotive Engineer Alex Fioco and Student Locomotive Engineer François Vachon were enroute from Toronto to Montreal on train number 52 via the Kingston Subdivision.

The weather conditions on that morning were a mixture of wind and blowing snow. While approaching Trenton Junction the crew observed a stop signal while travelling at track speed (100 mph).

The brakes were placed into emergency and the train passed the home signal at Trenton Junction. Emergency procedures were complied with and the crew was removed from service.

During the formal hearing into this matter, the 3 crew members gave unwavering testimony that the approach signal to Trenton Junction located at mile 232.8 was displaying a clear indication and that this indication was verbally communicated to each other in accordance with CROR.

The Brotherhood has repeatedly requested key radio communication evidence of conversations between the RTC and crew while at Trenton Jct. No such evidence was presented at the hearing and to date CN has refused to produce it.

A number of reports of signal abnormalities have been witnessed and documented by train and engine crews on the Kingston Subdivision including supervisory personnel.

In summary, the Brotherhood contends that the incident in question was the result of a technical violation and that the crew was not deserving of any discipline in this matter.

### **FOR THE BROTHERHOOD:**

**(SGD.) J. R. TOFFLEMIRE**

**GENERAL CHAIRMAN**

There appeared on behalf of the Corporation:

E. J. Houlihan	– Sr. Manager, Labour Relations, Montreal
G. Benn	– Labour Relations Officer, Montreal
J. P. Pollender	– Manager, Customer Services, Montreal
M. Bastion	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. R. Tofflemire	– General Chairman, Oakville
M. Grieve	– Local Chairman, Toronto
S. Thérien	– Grievor
F. Vachon	– Grievor
A. Fioco	– Grievor

### **AWARD OF THE ARBITRATOR**

It is common ground that on January 19, 1999 train no. 52, being operated eastward on the Kingston Subdivision under the control of a three person crew, including Locomotive Engineers Serge Thérien and Alex Fioco as well as Student Locomotive Engineer François Vachon, failed to stop at signal 2328S, which was displaying a stop indication. The crew submits that the approach signal which preceded the home signal did not indicate that they should be prepared to stop, and that in fact the approach signal, signal 2358S, displayed a clear indication.

Ensuing investigations of the signalling equipment resulted in a finding by the Transport Safety Board to the effect that the approach signal could well have been faulty. While the report of the Transport Safety Board states that it had not determined the cause of the occurrence, it noted that in fact the relays operating the approach signal were of a type found to have been subject to occasional failures by reason of sticking of the contact surfaces. On that basis the investigation report expressed the conclusion that the relays controlling the approach signal might have improperly stuck during the occurrence, causing the approach signal to display a clear indication, which would lead the train crew to believe that the home signal would also be permissive.

The Corporation stresses that CN, whose signals were involved, questions the conclusion suggested by the Transport Safety Board. It would appear that CN's view is to the effect that as the circuitry to the approach and home signals is inter-linked, and the home signal which was run by the grievors had been in a stop indication for some time previously, the approach signal must also have displayed a "prepare to stop" indication. Records tendered in evidence indicate that the rail traffic controller made a number of attempts to change the position of the home switch, without success, until moments before the movement of the grievors arrived.

When the whole of the evidence is reviewed, bearing in mind that the Corporation bears the burden of proof, the Arbitrator is left in some doubt as to whether the equipment governing the approach signal was sufficiently reliable to sustain the inference of negligence drawn against the employees by the Corporation in the circumstances disclosed. Part of the difficulty arises from the fact that the report of the Transport Safety Board and the contrary view of CN appear to have been made available to the parties only shortly prior to the arbitration hearing. In the result, the Arbitrator is left with something less than a complete and balanced discussion of the likelihood that there might have been a malfunction in the approach signal at Trenton Junction at the time in question. Given the seriousness of the cardinal rule violation involved, this is a case in which the standard of proof should be commensurate with the severe disciplinary consequences attached. I am satisfied that that standard is not met, given the conflicting theories which are now presented.

In the result, the grievances must be allowed. The Arbitrator directs that the forty demerits assessed against Locomotive Engineers Thérien and Fioco be removed from their records forthwith, and that the twenty demerits assessed against Student Locomotive Engineer Vachon likewise be removed from his record.

February 12, 2000

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