

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3320

Heard in Montreal, Thursday, 16 January 2003

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Discharge of Locomotive Engineer Serge Gauvreau.

BROTHERHOOD'S STATEMENT OF ISSUE:

Engineer Gauvreau was involved in an incident at Alexandria while operating train 31 between Montreal and Ottawa. He left the station assuming his mate was on board not aware he was in the station at the time. The Corporation was aware of this fact and at the completion of the trip he admitted to his Operations officer.

He had no discipline at the time of the incident. An investigation was held and he was discharged. The Brotherhood appealed the discipline as being too severe as the situation was unique and this error in judgement was not intentional on the part of Locomotive Engineer Gauvreau.

The Corporation chose not to respond to the grievance.

FOR THE BROTHERHOOD:

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

There appeared on behalf of the Corporation:

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

And on behalf of the Brotherhood:

S. Chamberlain	– Counsel, Ottawa
J. R. Tofflemire	– General Chairman, Oakville
E. MacKinnon	– Local Chairman, Montreal
R. Thériault	– Local Chairman, Ottawa
S. Gauvreau	– Grievor

AWARD OF THE ARBITRATOR

The material establishes, beyond dispute, that on June 27, 2002, while operating as a locomotive engineer on train 31 between Montreal and Ottawa the grievor, Mr. Serge Gauvreau, handled the passenger movement alone, without the assistance of a second locomotive engineer in the cab of his train.

On the day in question the grievor was operating train no. 31 from Montreal to Ottawa with the assistance of Locomotive Engineer André Barrière. When the train stopped at the station in Alexandria it appears that, unbeknownst to Mr. Gauvreau, Mr. Barrière proceeded to the body of the train to get three cups of coffee from the service manager. He then went into the Alexandria Station to give one of the cups of coffee to the station attendant. While he did so Mr. Gauvreau received a radio signal from the service manager that the doors were closed and locked and that the train was ready to proceed. Believing that Mr. Barrière was then either in the locomotive's washroom or in the body of the train, Mr. Gauvreau drove train no. 31 out of Alexandria Station. It appears that it was only some twelve minutes later, when he received a telephone call on his cell phone from Mr. Barrière, that he discovered that his workmate was missing. It is not disputed that at that point it would have been the grievor's obligation to stop the train and await further instructions pending the return of Mr. Barrière to the train or the dispatching of a second locomotive engineer.

In fact, however, Mr. Barrière, described as a thirty year veteran, told Mr. Gauvreau that the better course was for him to continue to operate the train onwards to Ottawa, and that he would remain in contact by radio while being driven to Ottawa by two separate track maintenance foremen. That, it appears, was the procedure which was then followed. In the result Mr. Gauvreau operated the train alone a distance of some fifty miles to the Ottawa Station. Shortly thereafter Mr. Barrière arrived in Ottawa, checked the train and train register and then joined the grievor at the hotel designated for their rest period. Later the same day the two employees operated train no. 36 on the return leg from Ottawa to Montreal. It appears that during that time Corporation officials learned what had transpired at Alexandria and Mr. Gauvreau and Mr. Barrière were removed from service pending an investigation upon their arrival in Montreal.

Following their investigations, which were held on July 2, 2002, the grievor was terminated and Mr. Barrière, who was on the verge of his retirement, was given forty-five demerits.

The Brotherhood's counsel submits that the discharge of Mr. Gauvreau was excessive in the circumstances disclosed. He stresses that the grievor was an employee of limited experience as a locomotive engineer, having been trained in that capacity through the Corporation's NEPO initiative. He emphasizes that Mr. Gauvreau was misled in his judgement by the course of action directed by Mr. Barrière, the more senior and experienced locomotive engineer. Counsel also stresses that the grievor did not deliberately depart Alexandria with the intention of operating train no. 31 alone in the locomotive cab and that it was only some time later, while enroute, that he became aware of the problem which had arisen. He submits that in the circumstances what transpired was not a planned deliberate course of wrongdoing, but rather an error of judgement in an extremely unusual circumstance. On that basis he maintains that the case at hand is to be distinguished from **CROA 3181**, a case in which the discharge of Locomotive Engineer McAndrew was sustained when he knowingly and deliberately operated a train from Niagara Falls to Toronto accompanied only by his son in a locomotive cab.

The Corporation's representative takes a different view. He stresses that the requirement of two locomotive engineers in passenger service is one of utmost safety and security. Noting various rules which contemplate the use of two locomotive engineers, including the calling and confirming of signals enroute, the Corporation's representative maintains that the grievor engaged in a course incompatible with the safe operation of his train and the protection of its passengers and crew, in a manner which is simply not justifiable in the circumstances. He also stresses that whatever the grievor's initial thoughts, in the end he clearly leant himself to the course of silence and concealment urged upon him by Mr. Barrière. He notes that neither of the locomotive engineers made any report of the irregularity to a rail traffic controller, or to any Corporation official upon arrival in Ottawa, reflecting their intention and hope that the matter would pass unnoticed. It appears that that hope proved vain by reason of a report made independently by the station attendant at Alexandria.

The Arbitrator well appreciates the Corporation's concerns. In my view, subject to the particular qualifications which arise in the case at hand, discharge would arguably be the appropriate measure of discipline for a locomotive engineer in passenger service knowingly and deliberately operating without the support of a second locomotive engineer. When the facts of the case are examined, however, there are two factors which do come to bear in

mitigation. In the first is that, as stressed by the Brotherhood, the circumstance was not one which was deliberately engineered by Mr. Gauvreau. The departure of Mr. Barrière from the train, and his being left behind in Alexandria was not of the grievor's doing, and indeed occurred entirely without his knowledge.

More significant, in the Arbitrator's view, is the second factor, being the substantially different measure of discipline assessed against the two locomotive engineers. Mr. Barrière, by far the senior employee of the two, told Mr. Gauvreau by radio that the best course of action would be to simply have him operate the train alone to Ottawa, thereby avoiding any delay or inconvenience to the passengers. While it was obviously Mr. Gauvreau's duty to disregard that instruction and to immediately report the irregularity, it is indisputable that the decision to have the train proceed with a single locomotive engineer was taken jointly by both employees. Similarly, to the extent that there was a failure to disclose the incident to Corporation officials, both employees were equally responsible.

It is well established in industrial discipline that like infractions should attract like discipline. In the case at hand it is the Arbitrator's view that both employees were equally responsible for the decision to operate the train with a single locomotive engineer, and to conceal their course of conduct from the Corporation. While both individuals have comparable service with the Corporation and Mr. Barrière had a substantially longer railroading career, both were without any discipline in their records at the time of the incident. Notwithstanding these similarities, however, the Corporation assessed forty-five demerits against Mr. Barrière and discharged Mr. Gauvreau. On the whole, the Arbitrator is satisfied that the discrepancy in these two forms of discipline is too great, given the shared responsibility disclosed in the evidence. While I am prepared to accept that, to some degree, the grievor may have had a different kind of responsibility, to the extent that he had the opportunity to stop the train notwithstanding Mr. Barrière's instructions, I am not persuaded that the radical difference in treatment of the two individuals is justified.

For the foregoing reasons the grievance is allowed in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for wages and benefits lost. The period during which he has been out of service shall be shown on his record as a suspension.

January 17, 2003

(signed) MICHEL G. PICHER
ARBITRATOR