

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3624

Heard in Montreal, Wednesday, 11 July 2007

Concerning

VIA RAIL CANADA INC.

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discipline and discharge of Locomotive Engineer Raymond Saumur.

JOINT STATEMENT OF ISSUE:

On June 19, 2006, Locomotive Engineers Raymond Saumur and Cecil Code were the locomotive engineers on train 30. The train exceeded the maximum permissible speed limit through a crossover at Ballantyne during their tour of duty from Ottawa to Montreal.

The Union submits that Locomotive Engineer Saumur was not in the locomotive cab at the time of the incident. His mate, Engineer Code, was operating the locomotive and resigned following the incident without attending a hearing.

The TCRC further submits that Engineer Saumur was traumatized by the event which was reported the following day to his supervisor. He was removed from service, an investigation was held and Mr. Saumur appeared confused, admitted that he did not handle the situation well, believed he was in shock, had been suffering from insomnia and did not contest the evidence. He further stated that he deeply regretted what had occurred. The Corporation discharge Engineer Saumur following his hearing. The Union appealed the discipline on the grounds that it was too severe and recommended that Engineer Saumur be extended EAP counselling which was granted.

The Corporation submits that Mr. Saumur and his mate, Mr. Cecil Code, committed serious rule and safety violations while working on train 30 on June 19th, 2006. They violated a speed signal at the Ballantyne location and went through a crossover at 68.5 mph instead of 15 mph. The event was not reported by either locomotive engineer and it was only discovered following a passenger complaint the next day.

Mr. Saumur was investigated on June 29th, 2006 and was subsequently discharged. The Corporation maintains that the essential bond of trust between the employer and employee was broken by Mr. Saumur's negligence and dishonesty and cannot be restored. Under the circumstances, the Corporation maintains the discharge of Raymond Saumur was appropriate and the discipline was warranted.

FOR THE UNION:

(SGD.) J. R. TOFFLEMIRE
GENERAL CHAIRMAN

FOR THE CORPORATION:

(SGD.) A. RICHARD
SENIOR ADVISOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

- | | |
|------------|--|
| D. Stroka | – Senior Advisor, Labour Relations, Montreal |
| H. Tran | – Manager, Train Operations (East) |
| A. Richard | – Senior Advisor, Labour Relations, Montreal |

And on behalf of the Union:

J. C. Morrison	– Counsel, Ottawa
J. R. Tofflemire	– General Chairman, Stratford
R. Theriault	– Local Chairman, Ottawa
D. Dumais	– Legislative Representative, Ottawa
B. Colbourne	– Locomotive Engineer (ret'd), Ottawa
R. Saumur	– Grievor

AWARD OF THE ARBITRATOR

The essential facts in this grievance are not in dispute. The grievor, Locomotive Engineer Raymond Saumur, was the In Charge Locomotive Engineer on train 30 operating between Dorval and Montreal on June 19, 2006. Having duly called an approach signal to the crossover switch at Ballantyne, which is situated between Dorval and Montreal, Mr. Saumur left the cab of the locomotive to use the washroom. When he returned his train, under the control of Operating Locomotive Engineer Cecil Code had gone into an emergency brake application as it approached and travelled through the crossover, coming to a stop on the north track. While the permissible speed on the crossover is 15 m.p.h., a data download of the locomotive indicates that the average speed of the train through the crossover was 68.5 m.p.h. It appears that two passengers suffered some minor injuries or bumps by reason of the rough movement of the train, and that the service manager made a report of the rough movement in his regular Trip Report at the conclusion of the trip on June 19, 2006.

The record indicates that when the train had been brought to a stop Mr. Saumur exited the train with a radio and did an inspection of the undercarriage of the cars on the train, albeit not in the proper form of a pull-by inspection. Seeing nothing irregular, he returned to the cab where he was told by Locomotive Engineer Code that everything was okay. Contrary to operating rules, neither Mr. Code nor Mr. Saumur had radioed the Rail Traffic Controller to indicate that an emergency stop had been made nor did either of them make any report to either VIA or CN respecting the incident and any possible damage to the crossover switch at Ballantyne. It was only the following day, June 20, 2006, when Mr. Saumur was approached by Assistant Superintendent Richard Gu  rin who wished to discuss the Service Manager's report that Mr. Saumur revealed what had transpired. The grievor states that in fact on that day he had come to work early with the intention of advising Mr. Gu  rin of what had transpired, indicating that he had been put under some pressure by Mr. Code not to reveal the incident. It does not appear disputed that in light of his prior discipline record Mr. Code would have been vulnerable to discharge.

Being advised of the incident, the Corporation gave notice to both Mr. Saumur and Mr. Code to attend at a disciplinary investigation. Mr. Code elected to resign his employment and did not appear for his interview. In the result, the only record of what occurred is the essentially unchallenged account of Mr. Saumur. While the Corporation suggests that there are some inconsistencies in the statements of Mr. Saumur as between his first statement to Mr. Gu  rin and the content of his disciplinary interview, the Arbitrator does not view the grievor as having been evasive or deceptive in his account of events to the Corporation. By the grievor's own account, he was plainly involved in serious violations of operating rules, including the concealment of the incident at the Ballantyne crossover, in a manner which would justify a high degree of discipline. It would also appear undisputed that the incident caused enormous stress to the grievor who subsequently requested and was granted psychological counselling under the Corporation's EFAP program. Following its investigation, the Corporation assessed sixty demerits against the grievor and discharged him for the violation of a number of CROR rules as well as CN General Operating Instructions in relation to the incident at the Ballantyne crossover.

The sole issue in the case at hand is the appropriate measure of discipline. The Arbitrator is satisfied that the grievor did violate the rules and operating instructions relating to the proper speed of his train and the procedures to be followed following the emergency stopping of his train after its overspeed crossing the crossover at Ballantyne. In essence, the grievor and his workmate failed utterly to disclose to the Corporation or to CN any of the facts of what should have been viewed as an extremely serious incident. In the past such conduct has been found by this Office as justifying the termination of employees who fail to disclose the occurrence of a dangerous incident which involves rules violations (see, e.g., **CROA&DR 3607**). Similar cases have also resulted in the reduction of penalties to something less than discharge, where mitigating circumstances would justify that result (see, e.g., **CROA 1626**).

In the case at hand there are mitigating circumstances to be considered. Mr. Saumur is a long service employee with close to thirty years' service. From the time he was first hired by CN in 1977 until his discharge he recorded an

extremely positive discipline record, having received discipline on only one occasion, receiving thirty demerits for an incident in July of 2002. Additionally, as reflected above, while the Arbitrator cannot excuse Mr. Saumur's failure to fully and promptly report the incident, the evidence before the Arbitrator would indicate that he was not in the cab at the time his workmate failed to maintain proper speeds on the approach to the Ballantyne crossover. While these facts do not excuse the gravity of his subsequent failure to properly report the incident, it is also noteworthy that he did fully disclose what transpired when he was first approached by Mr. Guérin. It also appears that the grievor was under the belief that his workmate, Mr. Code, had communicated the emergency brake application to the Rail Traffic Controller, a conclusion which he drew from Mr. Code's answer to him that everything was okay when he returned to the cab after inspecting the undercarriage of the train.

In all of the circumstances the Arbitrator cannot agree that the facts would indicate that the bond of trust between the grievor and the Corporation is irrevocably broken. I am satisfied that a serious measure of discipline, short of discharge, will suffice to impress upon the grievor the need to be fully candid and prompt in the reporting of any irregular incident. That is particularly so bearing in mind that he has been held out of work for over a year.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for any wages and benefits lost, and without loss of seniority. The grievor's return to work shall be conditioned upon his satisfactorily passing a medical examination which will certify his physical and psychological fitness to work.

July 16, 2007

(signed) MICHEL G. PICHER
ARBITRATOR