

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION  
CASE NO. 3682**

Heard in Montreal, Wednesday, 9 July 2008

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The suspension of Locomotive Engineer Yves Paquette, from January 3, 2008 to April 19, 2008, following a violation of CROR 429 while assigned to AMT/Montrain on the Deux Montagness Subdivision.

**JOINT STATEMENT OF ISSUE:**

On January 03, 2008, Mr. Paquette worked on assignment 9504 and began his tour of duty at the St-Eustache yard. He was operating the train from that location to the passenger station at Deux Montagness and used the train brakes in order to slow his train as he passed by the passengers' north end platform.

According to Mr. Paquette, when he began to stop his train at the station it did not respond properly and he put the train into emergency while going at 9.5 m.p.h. The train passed by signal 194W displaying a stop indication.

The Union submits that Mr. Paquette did exactly what is expected from a professional locomotive engineer and that he did not exceed the allowed speed on his way to Deux Montagness. The Union also submits that he operated the train slower than he usually did and began braking at a greater than usual distance. Mr. Paquette did not attempt to cover up the incident.

The Union submits that the facts related to this case do not warrant the suspension of Mr. Paquette and is requesting that he be compensated for all loss of earnings and benefits.

The Company does not agree.

**FOR THE UNION:**

**(SGD.) P. VICKERS**  
GENERAL CHAIRMAN

**FOR THE COMPANY:**

**(SGD.) A. DAIGLE**  
FOR: VICE-PRESIDENT, OPERATIONS

There appeared on behalf of the Company:

A. Daigle – Manager, Labour Relations, Montreal

D. Gagné	– Manager, Labour Relations, Montreal
M. Carrier	– Transportation Supervisor
D. Larivière	– Mechanical Supervisor

And on behalf of the Union:

C. Morrison	– Counsel, Ottawa
P. Vickers	– General Chairman, Sarnia
G. Quesnel	– Local Chairman
B. Pélissier	– Locomotive Engineer
Y. Paquette	– Grievor

### **AWARD OF THE ARBITRATOR**

The case at hand involves extremely unusual facts. It is common ground that on the morning of January 3, 2008 conditions were particularly snowy and icy on the Deux Montagnes Subdivision where Locomotive Engineer Paquette was assigned in commuter service with AMT/Montrain. Although it is not disputed that he was ultimately unable to stop his train movement at the platform in Deux Montagnes, and came to a stop only after passing Signal 194W which displayed an stop indication, there are unusual mitigating factors to take into account.

Firstly, the download evidence in respect of three trains, including Mr. Paquette's movement, which travelled between St. Eustache and Deux Montagnes on the morning in question is significant. That evidence reveals that Locomotive Engineer Paquette operated his movement between the two points at virtually the same speeds and with comparable brake applications as the two movements which travelled over the territory before him. The evidence reveals that the first train, Train 920, encountered slippery conditions and that by reason of that experience the crew of that train alerted the crew of the second train, Train 922. As a result, that train was able to come to a safe stop at Deux Montagnes. It is common ground, however, that no such information with respect

to the hazardous condition of the track and the locomotive equipment was conveyed to Mr. Paquette.

There is a still more compelling mitigating factor to be weighed. During the course of the hearing it emerged, through the expert testimony brought by the Union, in the person of a former locomotive engineer instructor, that the particular locomotives used in the Montrain service do not have the same emergency braking capacity as other locomotives. As he explained it, without contradiction from the Company, when a locomotive engineer applies the emergency brakes to the system on the Montrain train, in fact a reduction in braking power occurs. Based on the information from the computer download presented in evidence, he estimates that as Mr. Paquette approached the station and applied the emergency brakes for close to thirty seconds, he lost 60% of his braking power for a period of seventeen seconds. By contrast, he explained, in other locomotives an application of the emergency brake system will prompt a 10% improvement in the braking power of a train. The assertion of the Union is that the locomotive engineers in Montrain service were never made aware of this aspect of the braking system of the locomotives used in that service. That assertion was not disputed by the Company's representatives at the arbitration.

What then, does the evidence disclose? What it reveals, in the Arbitrator's view, is that Mr. Paquette proceeded with reasonable caution at all times in the handling of his train between St. Eustache and Deux Montagnes. The evidence would also suggest that if his train's braking system were comparable to those found in other forms of service within the Company's operations, the application of the emergency brake, which

I am satisfied was timely, would have brought his movement to a safe stop short of the stop indication at signal 194W. He had no reason to believe otherwise.

The Arbitrator finds it difficult to learn that the Company did not advise all locomotive engineers in Montrain service that an application of the emergency brakes on their train would in fact result in a reduction of braking capacity. Whatever the reasons may be for that apparent omission, it cannot be disregarded as an extremely important mitigating factor in the case at hand. How can it be known whether, but for the Company's failure to properly warn its locomotive engineers, the incident which is the subject of this grievance might not have occurred? In the Arbitrator's view the failure of the Company in that regard is sufficient to negate the assessment of any discipline in the circumstances of the case at hand.

The grievance is therefore allowed. The Arbitrator directs that the three month suspension assessed against the grievor be stricken from his record and that he be compensated for all wages and benefits lost.

July 14, 2008

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