

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

**CASE NO. 3718**

Heard in Montreal, Wednesday, 14 January 2009

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**EX PARTE**

**DISPUTE:**

The discharge of Richard Moss of Edmonton, Alberta, for a violation of CROR Rule 429 while employed as a conductor on train \$41751-26 on October 27, 2007 at Mileage 112.1 (Peers) resulting in a derailment and collision with train M34251-26.

**COMPANY'S STATEMENT OF ISSUE:**

On October 26, 2007, Mr. Moss was called to work as a conductor on train A41751-26, departing Edmonton terminal at approximately 23:30 travelling west towards Edson. The grievor received an advance clear to stop signal at Mile 107.3, a clear to stop signal at Mile 109.5 and finally a stop signal at Mile 112.1. The grievor's train A41751-26 failed to comply with the stop at signal Mile 112.1 resulting in a collision with eastbound train M34251-26.

The grievor was discharged from service for violation of CROR Rule 429.

The Union contends that the grievor was very inexperienced and had not received adequate training as a conductor, was unfamiliar with the territory, and had no reason to suspect that the locomotive engineer did not have full control of the train.

The Union claims that the discipline is unwarranted and in any case excessive.

The Company disagrees.

**FOR THE COMPANY:**

**(SGD.) P. PAYNE**

**FOR: DIRECTOR, LABOUR RELATIONS**

There appeared on behalf of the Company:

P. Payne	– Manager, Labour Relations, Edmonton
D. VanCauwenbergh	– Director, Labour Relations, Edmonton
J. Cavé	– Counsel, Montreal
C. Wagner	– Observer

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
R. A. Hackl	– Vice-General Chairman, Edmonton
R. Barr	– General Chairman (former), Edmonton
D. Bolianaz	– Local Chairman, Winnipeg
R. Moss	– Grievor

**AWARD OF THE ARBITRATOR**

It is not disputed that on October 27, 2007 Conductor Moss and his locomotive engineer, Les Grezniak, did violate CROR rule 429 by missing a stop signal at mileage 112.1 of the Edson Subdivision at Peers. The facts of the incident are more thoroughly reviewed in **CROA&DR 3702** and need not be repeated here.

Having reviewed the materials and heard the submissions of the parties, the Arbitrator is satisfied that the Company did have just cause for discipline as against Mr. Moss. However, the Arbitrator determines that it is appropriate to reinstate the grievor into his employment without loss of seniority, however, without compensation, subject to certain temporary restrictions of duty.

The grievance is therefore allowed in part. The grievor shall be reinstated into his employment forthwith, without loss of seniority and without compensation for any wages and benefits lost. The time between the grievor's termination and reinstatement shall be recorded as a suspension for the events of October 27, 2007. The grievor's reinstatement is also conditioned on the fact that he shall not be assigned to work as a conductor or as a yard conductor for a period of not less than six months following his reinstatement.

January 19, 2009

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