

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

**CASE NO. 3732**

Heard in Calgary, Thursday, 12 March 2009

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**EX PARTE**

**DISPUTE:**

Assessment of 30 demerits to Locomotive Engineer J.R. Adam of Kamloops for “violation of CROR 105, Speed on other than main track, resulting in a side collision with passenger train P61051-21 on May 21, 2006.”

**COMPANY’S STATEMENT OF ISSUE:**

On May 21, 2006, Mr. Adam was working a yard assignment in Kamloops yard. During his tour of duty, he was involved in a side collision with passenger train P61051-21. An employee statement was held; Mr. Adam was assessed 30 demerits for violation of CROR 105.

The Union contends that the discipline is unwarranted and ought to be expunged.

The Company disagrees with the Union’s contentions.

**FOR THE COMPANY:**

**(SGD.) D. CROSSAN**

**FOR: DIRECTOR, LABOUR RELATIONS**

There appeared on behalf of the Company:

D. Crossan	– Manager, Labour Relations, Prince George
D. VanCauwenbergh	– Director, Labour Relations, Edmonton
R. Robinson	– Engine Service Officer, Vancouver
G. Capeness	– Nurse Case Manager, OHS, Edmonton

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
T. Markewich	– Sr. Vice-General Chairman, Edmonton
J. Adam	– Grievor

## **AWARD OF THE ARBITRATOR**

Based on the evidence before the Arbitrator there can be no doubt but that the grievor did violate CROR 105 on May 21, 2006. Mr. Adam was in charge of operating two locomotives at the head of a yard assignment which was proceeding in an area of limited visibility of the Kamloops Yard. As he rounded a curve he glanced backward to observe the movement of the cars behind him on his own train as they traversed a crossover. When he turned to face forward he immediately saw that the track ahead of him was occupied by the Rocky Mountain Rail tour train, a passenger movement which was then empty, moving on the lead at the KR00 switch. Although he made an emergency brake application, his speed and proximity to the other movement were such that a collision was inevitable. Indeed, a collision occurred, with the grievor's train striking the RMR in a side collision at a speed of seven miles per hour. Four cars of the RMR train were derailed, extensive damage resulted to the head end locomotive of the grievor's train and a substantial quantity of diesel fuel was spilled, creating a hazardous situation.

The Arbitrator is satisfied, on the facts disclosed, that Mr. Adam did fail to proceed at a speed which would have allowed him to stop within one-half the field of vision, as required by CROR 105. However, the Union raises a serious procedural issue. It argues the application of article 86.4 of the collective agreement which provides as follows:

**86.4** A locomotive engineer and his accredited representative shall have the right to be present during the examination of any witness whose evidence may have a bearing on the locomotive engineer's responsibility to offer rebuttal through the presiding officer by the accredited representative. The Local Chairman and/or the General Chairman to be given a copy of statements of such witness on request.

The record discloses, without controversy, that following the disciplinary examination of Mr. Adam separate statements were taken of Yardmaster Steven Spencer as well as the Yard Foreman on the grievor's assignment, Dave Collins. Neither the grievor nor his Union representative received notice of the statements to be taken from either the yardmaster or the yard foreman, and obviously had no opportunity to offer any rebuttal to evidence which they might give. On that basis the Union submits that the discipline assessed against the grievor must be viewed as null and void *ab initio*.

The Arbitrator is compelled to agree. It would appear undeniable that evidence to be given by the yardmaster who oversaw the grievor's yard assignment, and the yard foreman who was part of Mr. Adam's crew, could plainly be expected to be evidence which would have a bearing on his responsibility for the collision which occurred. That would be so whether or not the evidence of those individuals would, in the end, be negative towards the grievor. In essence, Mr. Adam was simply denied the opportunity to hear what either of his co-workers had to say about the incident or to put questions to them which might have elicited facts in mitigation of his own responsibility. That is plainly contrary to the intention of article 86.4 of the collective agreement and, for

reasons well established in prior awards of this Office, the discipline cannot therefore stand. (See, **CROA 628, 1163, 1575, 1858, 2077, 2280, 2609, 2901, 3221** and **3214**.)

For these reasons the grievance must be allowed. The Arbitrator directs that the thirty demerits assessed against Mr. Adam be struck from his record.

March 16, 2009

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