

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

CASE NO. 3744

Heard in Montreal, Wednesday, 15 April 2009

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge of Locomotive Engineer Robert Rourke.

JOINT STATEMENT OF ISSUE:

On December 10, 2008 Mr. Rourke was required to attend a formal investigation in connection on with the circumstances surrounding; Alleged violation of CROR Rule 439 (previously 429) proceeding past stop signal 1172 at Medora while working as the engineer on train M3 1451-03 on December 7, 2008

Following the investigation, the Company issued a Discipline Form 780 dated January 5, 2009 assessing Mr. Rourke with a discharge from Company services for "violation of' CROR Rule 439 (previously 429) proceeding past stop signal 1172 at Medora while working as the engineer on train M31451- 03 on December 7, 2008".

The Union contends that the discipline assessed Mr. Rourke was excessive and should be adjusted to a more appropriate level.

The Company disagrees.

FOR THE UNION:

(SGD.) P. VICKERS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. A. BOWDEN
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

R. A. Bowden	– Manager, Labour Relations, MacMillan Yard
F. O'Neill	– Manager, Labour Relations, MacMillan Yard
R. Glass	– District Engine Service Officer – Great Lakes, Toronto
J. Kelly	– Sr. Manager, Commuter Operations, Toronto

And on behalf of the Union:

J. C. Morrison	– Counsel, London
P. Vickers	– General Chairman, Sarnia
N. Dzuba	– Counsel, Ottawa
R. Rourke	– Grievor

AWARD OF THE ARBITRATOR

There is no dispute that the grievor was working as a locomotive engineer along with Conductor Zamkowksi when his train passed a "Stop" signal on the main track at Medora by some 52 feet, some 352 feet beyond where the locomotive is required to stop under CROR 439. The grievor failed to use forward planning to apply the automatic brakes in time and was then required to make an emergency brake application to stop the train.

The grievor admitted at his investigation that he had committed an error in judgment. He said that he underestimated the length of time he needed to stop the train because he felt he had the train under control up until he was required to use the emergency brakes. It is fortunate that a more serious accident did not result from this cardinal rule violation. There is no question that the incident merits a serious disciplinary response. The focal issue is whether discharge is the appropriate disciplinary response.

The grievor has an unenviable disciplinary record which includes prior CROR and GOI rules' violations. His record stood at 45 demerits at the time he was discharged for the current incident. There are, however, important mitigating factors which must be considered. The grievor has 19 years of service. He has fully and unequivocally accepted responsibility for this incident. In that regard, he acknowledged at his interview both the seriousness of the incident and the potential for harm and damage that could have resulted from his negligence. That forthrightness must be viewed as a strong mitigating factor which suggests that the grievor recognizes his error and will pay greater attention to his duties and responsibilities in the future. This is a case where it would be appropriate to grant the grievor an opportunity to prove that he can be a reliable employee who will be vigilant in ensuring the safe operation of his assigned locomotive while on duty. The grievor shall be reinstated to his former position without compensation or loss of seniority.

May 4, 2009

(signed) JOHN M. MOREAU, Q.C.
ARBITRATOR