

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

CASE NO. 3745

Heard in Montreal, Wednesday, 15 April 2009

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge of Locomotive Engineer Paul Stoiku

JOINT STATEMENT OF ISSUE:

On December 10, 2008 Mr. Stoiku was required to attend a formal investigation in connection with the circumstances surrounding: Train 936 passing Stop Signal at Mimico East on November 29, 2008.

Following the investigation, the Company issued a Discipline Form 780 dated December 22, 2008 assessing Mr. Stoiku with a discharge from Company services for "violation of CROR Rules 102, 403.1 and 439 The Union contends that the discipline assessed Mr. Stoiku 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
D. S. Fisher	– Director, Labor Relations, Montreal

And on behalf of the Union:

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

AWARD OF THE ARBITRATOR

The grievor was working on GO train 936 on November 29, 2008 when it passed signal 064T3, displayed as "Stop". The grievor acknowledged, as did the conductor, that the train had just proceeded on a "Clear to Stop" signal indication at Canpa, which was the last stop before the platform at Mimico. The signal indication at Canpa required that the train be prepared to stop at the next signal 064T3. The train passed the Stop signal by some 50 to 60 feet, which is some 360 feet beyond where the locomotive is normally required to stop. Train 936 was travelling in the same block occupied east of signal 064T3 panel by opposing VIA equipment. This situation prevented the RTC from getting a CROR Rule 439 alarm on his control. The grievor did not initiate an emergency radio broadcast for 4 minutes and 36 seconds, contrary to CROR rule 102 nor provide flag protection as required by CROR rule 403.1. Both the grievor and the Conductor were discharged as a result of the incident. The grievor tested non-positive for the presence of alcohol or illegal substances after being requested to submit to a post accident/incident test for the presence of drugs or alcohol.

After having reviewed the transcripts and the recordings of the discussions after the grievor reported the incident, I do not agree with the Company that this is a case where the grievor deliberately attempted to cover-up the passing of the stop signal. The flow of the discussion does not indicate the grievor was trying to avoid reporting of the incident. What is of concern, however, besides the four and one-half minute delay in reporting the incident, is the claim by the grievor at his investigation that he failed to initiate an immediate emergency call to the RTC because he was in "shock". There is no sense of that in the grievor's voice at the time he reported the incident and it strikes me as a convenient after-the-fact excuse to justify his otherwise reckless behaviour, particularly given his lengthy experience as a locomotive engineer.

It is very significant that the grievor, a GO train locomotive engineer, was responsible for the safe transportation of a number of passengers. It cannot be discounted that there was potential here for a collision with the VIA train which was located in the same block. Fortunately, the VIA train was a safe distance away from where train 936 came to a final emergency stop. An error of this kind could otherwise have had serious repercussions with the real possibility of injuries to the travelling public. Added to this concern is the whole matter of the four and half-minutes when the grievor did nothing to initiate emergency contact. Rather than come clean immediately about what had just occurred with the RTC, the grievor elected to wait an inexcusable amount of time before reporting the incident and then offered the rather lame excuse that he was in shock. The grievor's 24 years of service is a mitigating factor which weighs in favour of his reinstatement. His key position of responsibility for passenger safety as a GO train locomotive engineer is, however, of utmost concern. The grievor has, in my view, irreparably damaged the confidence that the Company places in his ability to perform his duties in a safe manner by his actions on November 29, 2008. After considering all the evidence, including his past disciplinary record, I must regrettably uphold the discharge and dismiss the grievance.

May 4, 2009

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