

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

CASE NO. 3768

Heard in Montreal Thursday 14 May 2009

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the dismissal of Locomotive Engineer Robert Speziale.

JOINT STATEMENT OF ISSUE:

On September 26, 2007, Locomotive Engineer Speziale was working as locomotive engineer on the Heron Bay Subdivision when he failed to ensure his movement was in compliance with all operating rules.

On October 9, 2007, Engineer Speziale attended an investigation in connection with the September 26 tour of duty. Following this investigation the Company dismissed Engineer Speziale for failing to ensure his movement operated in compliance with all operating rules. It is the Union's position that the assessment of discipline is excessive.

The Union requests that Engineer Speziale be reinstated without loss of seniority, wages or benefits and that there are mitigating factors which warrant further consideration. In the alternative, and without prejudice to the above, the Union requests that Engineer Speziale be reinstated upon such terms as the Arbitrator deems appropriate.

The Company disagrees and denies the Union's request.

FOR THE UNION:

(SGD.) T. BEAVER
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A. A. GARCIA
FOR: ASSISTANT VICE-PRESIDENT

There appeared on behalf of the Company:

A. A. Garcia	– Manager, Labour Relations, Calgary
D. Freeborn	– Manager, Labour Relations, Calgary
S. Nelson	– Manager, Operations, Smiths Falls

And on behalf of the Union:

M. A. Church	– Counsel, Toronto
T. Beaver	– General Chairman, Oshawa
W. Cormier	– Sr. Vice-General Chairman, Chapleau
M. Hamel	– Vice-General Chairman, Chapleau
R. Woodruff	– Local Chairman, Schreiber
K. Travis	– Witness

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that by reason of his own admitted inattention and “day dreaming” Locomotive Engineer Speziale paid no attention, for as long as eight minutes, to the operation of his locomotive which was then in the hands of Conductor Marlene Kosheluk. On the day in question, September 26, 2007, the grievor was operating train 116-21 from Schreiber to White River while supervising the locomotive engineer training of Conductor Kosheluk. Shortly after departing Schreiber Ms. Kosheluk took the locomotive engineer’s seat and controlled the train until the unfortunate events which led to the instant discipline.

It is not disputed that after monitoring Ms. Kosheluk’s work for a time Mr. Speziale, who was in the conductor’s seat of the cab, began thinking about problems in his personal life, including a possible tax liability and the hospitalization of a relative. For a period of time he estimates to be approximately eight minutes he paid no attention to the train handling of Ms. Kosheluk. In fact, he appears to have missed seeing and did not call a clear to stop signal prior to approaching signal 756 which indicated three red lights to stop. In fact, it appears that during the eight minute period of inattention on the part of Locomotive Engineer Speziale his train travelled over a twenty-five mile per hour slow order track, went through the clear to stop signal and proceeded over the crest of a steeply descending grade. It does not appear disputed that it was only when his train was some five or six car lengths from the stop indication at signal 756 that Locomotive Engineer Speziale finally realized the circumstances of his train. He immediately placed his train into emergency braking while it went through the stop signal at a speed of 25.8 m.p.h. The switch beyond the stop signal was lined for the siding at Caldwell where the grievor’s train entered the siding and collided with the rear end of a stationary train while travelling at 22.2 m.p.h. A substantial derailment resulted with both locomotives of the grievor’s train and five cars derailed as well as six cars on the train which was struck because of the grievor’s inattention. It is not disputed that the derailment also caused serious track buckling and that damage upwards of two million dollars occurred. The resulting recovery operation is said to have taken approximately three days to complete.

Following a disciplinary investigation the grievor was terminated for not less than sixteen violations of CROR and GOI operating rules as well as article 39.09 of the collective agreement.

There can be little doubt but that the grievor’s inattention and the devastating consequences of his abandonment of his responsibilities in supervising a trainee locomotive engineer was sufficiently serious, on its face, to result in his dismissal. The issue is whether the instant case would justify a substitution of penalty, as the Union argues it should.

The Arbitrator has substantial difficulty with the Union’s argument. While it is true that the grievor is a long service employee, with some twenty-three years of service, his prior disciplinary record is less than impressive. He was previously disciplined on not less than seven occasions for various rule violations over the years. Most significantly, he was assessed fifty demerits for an incident which occurred on August 19, 2003 on the same subdivision which gave rise to the facts of the instant grievance. On that day he failed to maintain proper control of his train and failed to utilize safe train handling techniques. His actions precipitated a serious derailment only thirteen miles from the derailment which is the subject of this award. On that occasion, as in the instant case, he later explained that he was “preoccupied with personal matters” and “not focussing on [his] train”. That incident, which also caused damages estimated to be in the millions, prompted the Company to give the grievor a last chance opportunity, by assessing fifty demerits rather than terminating his employment. The derailment in the case at hand occurred four years later. It is only by good fortune that there were no personal injuries suffered in the second incident of the collision and derailment, which I am satisfied was entirely occasioned by the grievor’s inattention.

It is not insignificant, in the Arbitrator's view, that preoccupation with personal concerns was at the root of both serious derailments caused by Locomotive Engineer Speziale. Given that fact, and his overall relatively weak disciplinary record, the Arbitrator can readily understand the concern that the Company has with respect to his ongoing employment in a safety-sensitive position. Indeed, I am satisfied that that concern is sufficient so as to reject the alternative suggestion made by counsel for the Union that this might be an appropriate case to demote the grievor to some other form of running trade activity, such as conductor or yard foreman's work. It is difficult to see how there cannot be a concern for safety in those alternative assignments, given the remarkable recidivism which appears to have caused two major derailments by reason of the grievor's repeated inattention to his work.

Regrettably, the Arbitrator cannot see any mitigating factors which would support a substitution of penalty in the case at hand. For all of these reasons the grievance must be dismissed.

May 22, 2009

(signed) MICHEL G. PICHER
ARBITRATOR