

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

CASE NO. 3809

Heard in Montreal, Wednesday, 14 October 2009

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

**TEAMSTERS CANADA RAIL CONFERENCE
RAIL CANADA TRAFFIC CONTROLLERS**

DISPUTE:

Mr. M. McCracken who was assessed 15 demerits for “failure to follow RTC procedures in not properly reporting and protecting the operation of VIA No. 1 after receiving a 439 audible alarm during your tour of duty HR-1 Feb. 25, 2009 resulting in violations of Rail Traffic Controllers’ manual Items 700B, 700G and 793”.

JOINT STATEMENT OF ISSUE:

On February 26, 2009, Mr. McCracken was working Desk HR-1 when he received an audible 439 alarms. As a result of Mr. McCracken’s handling of the alarm, he was assessed 15 demerits for failing to follow RTC procedures in not properly reporting and protecting the operation of VIA No. 1 after receiving a 439 audible alarm during his tour of duty, resulting in violations of Rail Traffic Controllers’ manual Items 700B, 700G and 793.

The Union disagrees with this assessment and contends that there was no need for a formal investigation and that the discipline assessed is excessive.

The Company denies the Union’s contentions and declines the Union’s claims.

FOR THE UNION:

FOR THE COMPANY:

(SGD.) J. RUDDICK
GENERAL CHAIRMAN

(SGD.) S. M. BLACKMORE
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

S. M. Blackmore	– Manager, Labour Relations, Edmonton
D. S. Fisher	– Director, Labour Relations, Montreal
G. Séguin	– General Superintendent, Operations, Toronto
P. Lavoie	– Manager, Operations, Toronto

And on behalf of the Union:

J. Ruddick	– General Chairman, Toronto
D. Shanahan	– Vice-Local Chairman, Toronto

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that in fact the grievor did fail to follow RTC procedures when he did not immediately contact the VIA No. 1 train after he received a false 439 audible alarm, an alarm that would indicate to the Rail Traffic Controller that a stop signal had been ignored. While the evidence discloses that 439 audible alarms were relatively frequent on the territory in question, apparently by reason of technical communication failures, the obligation of the grievor to immediately contact the train in question, to advise it to stop, and to immediately advise the MCO or Manager of the RCTC of the event was absolute. In fact Mr. McCracken did not immediately contact the train, but rather he contacted the S&C Department to ask them to investigate the signal. Nor did he advise his superior, who it appears was on the telephone at the time. In essence, Mr. McCracken made certain assumptions about the urgency of the situation and decided not to follow the rules. While his assumptions appear to have been correct, that does not justify a departure from the rules which govern the actions of a Rail Traffic Controller in the face of a signal which indicates that a stop signal has been passed. While it appears that some time after this event, on September 30, 2009, the Company issued a specific direction with respect to false Rule 439 alarms, even the amended rule requires as a first step that the train in question be immediately contacted to verify what the signal indication in the field in fact was. Even by virtue of the amended procedure, the grievor was not compliant.

The record reveals that the grievor has been disciplined on four prior occasions over the ten years of his employment. Significantly, he was assessed ten demerits only several months before the incident which is the subject of this arbitration. On the whole, I am satisfied that the assessment of fifteen demerits was within the appropriate range of discipline and therefore conclude that the grievance must be dismissed.

October 29, 2009

(signed) MICHEL G. PICHER
ARBITRATOR