

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

CASE NO. 3835

Heard in Montreal, Wednesday 9 December 2009

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge of Locomotive Engineer Mr. Bruce Gibson for “Rule 439 violation passing signal 649 in the USRC indicating stop while operating equipment 786 cab car 227 from Union Station to Willowbrooke. The time out of service from July 14, 2009 to serve as a suspension and the Discharge is effective July 16, 2009”.

JOINT STATEMENT OF ISSUE:

On July 12, 2009 Mr. Gibson, a locomotive engineer from Toronto South, was involved in a violation of CROR Rule 439 in operation of train GO 786 past a stop signal 649 by approximately 10 feet.

The Union submits that there was no cause for discharge in this case and further contends that there were mitigating factors which should be taken into consideration that would warrant the adjustment of the discipline to a more appropriate level such as a suspension.

The Company disagrees with the Union and maintains that the discipline assessed in this situation was both warranted and appropriate.

FOR THE UNION:

(SGD.) PAUL 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, Toronto
D. Gagné	– Sr. Manager, Labour Relations, Montreal
R. Helmle	– Regional Manager, CMC, Toronto

And on behalf of the Union:

J. C. Morrison	– Counsel, London
P. Vickers	– General Chairman, Sarnia
B. Gibson	– Grievor

AWARD OF THE ARBITRATOR

This award concerns three heads of discipline: the assessment of twenty demerits for operating errors resulting in delays to several trains, the assessment of fifteen demerits for smoking while on duty and the grievor's termination for a violation of CROR rule 439 while in the operation of a GO Train in Union Station at Toronto. Each of these grounds of discipline shall be considered separately, in turn.

The record discloses that the grievor was required to attend a Company investigation on May 17, 2008 in relation to delays to GO Train 2004 in April of 2008, a delay of some eleven minutes, a separate delay to GO Train 933 on April 30, 2008 for a period of twenty-two minutes and the cancellation of GO Train 211 on March 7, 2008. The evidence reveals, to the full satisfaction of the Arbitrator, that on each of the occasions the grievor committed an error in judgement which did occasion the train delays and cancellation in question. On March 7, 2008 the grievor incorrectly reported to the maintenance shop that his locomotive had popped a crank case button. In fact he was in error, as it was only the low water button which had popped. As a crank case button required his train to stop, something which would not have resulted from a low water button, unnecessary delay was incurred to his train and its passengers. In fact his train was cancelled and another train was dispatched to take on and carry his passengers after a significant delay.

On April 7, 2008 the grievor inadvertently shut down his consist by activating the MU Stop/Run switch. That occasioned a trouble shooting session with the Maintenance Shop which again caused his train to be delayed. Finally, on April 30, 2008 an error by Mr. Gibson in incorrectly setting the air brake cut-out valve on his locomotive when changing ends on his train at Oshawa incurred an extensive trouble shooting exercise which once more delayed his train.

Following an investigation the Company determined that twenty demerits was the appropriate measure of discipline for these infractions. In considering the appropriate measure of discipline the Company points to the fact that on February 14, 2008, the grievor had previously been assessed a written reprimand for a delay to his train which occurred on January 30, 2008.

While the Arbitrator can appreciate the Company's perspective, in the Arbitrator's view, given the grievor's length of service, the assessment of fifteen demerits would have been sufficient. The grievance is therefore allowed, in part. The Arbitrator directs that the discipline assessed against Mr. Gibson be reduced to fifteen demerits for the three incidents of delays to his trains.

The next head of discipline involves the assessment of fifteen demerits for smoking while on duty. That discipline follows the complaint of a trainee who was working in the locomotive cab with him in GO Train service over several days in June of 2008. The allegation, which is not denied by the grievor, is that Mr. Gibson smoked continually in the cab, to the point at which the trainee no longer wished to work with him.

While it is suggested on behalf of the grievor that he was not aware that there was any objection to his smoking by his workmate, the Arbitrator is satisfied that that is an irrelevant consideration. Smoking is unconditionally prohibited in a locomotive cab. Nor can I accept the suggestion of the grievor that he believed that the "old rule" was in effect which allowed smoking if no one objected. The evidence before the Arbitrator is clear that there has been an unqualified rule against smoking in the cab of a locomotive, a rule clearly promulgated at least since 2003. I am satisfied that the grievor was aware of this rule and that he knew that he was violating it at the time. In the result, the Arbitrator can see no basis to reduce the assessment of fifteen demerits issued against him. This grievance must therefore be dismissed.

I turn to consider the allegation respecting the grievor's violation of CROR rule 439. The violation of the rule is not denied. It appears that when the grievor's train was in a stationary position within Union Station on July 12, 2009, Locomotive Engineer Gibson observed a number of signals in the middle distance as indicating that he was clear to proceed. In fact, however, dwarf signal 649 which controlled his movement clearly indicated a stop, which would have prohibited the grievor from proceeding forward. Shortly after he passed the stop signal Mr. Gibson realised his error and placed his train into emergency braking mode, as a result of which it is said to have passed the stop signal by approximately ten feet.

The ensuing disciplinary investigation resulted in the grievor's discharge. The sole issue before the Arbitrator is the appropriate measure of discipline.

There can be no dispute but that the grievor violated a cardinal rule, clearly attracting a serious measure of discipline. However, as with any rule violation, its disciplinary consequences must be assessed having regard to the specific circumstances, and in relation to any possible mitigating factors.

In the instant case there are mitigating factors to consider. Firstly the grievor admitted his error and did not attempt to conceal it. At the time he immediately followed all of the appropriate procedures required following such an incident. Most significantly, the grievor's twenty-five years of service are essentially devoid of any prior rules violations. As Mr. Gibson responded during the course of his investigation "In 25 years, I haven't had a rules' violation. In 13 years or more of running commuter trains I haven't experienced any CROR issues. ... I regret the situation happening. I can't explain why it happened. I hope it never happens again ... If I screwed up, I accept the evidence ...".

The issue before the Arbitrator is whether it is appropriate to terminate the grievor's service after twenty-five years for what is in effect his first rules' violation, albeit it a very serious one. I am satisfied that this is an appropriate case for a reduction of penalty, albeit by the substitution of a nevertheless very serious measure of discipline.

In the result, the Arbitrator directs that the grievor be reinstated into his employment forthwith, with the period between his termination and his reinstatement to be recorded as a suspension for his violation of CROR rule 439. He shall return to work with a total of fifty demerits on his record.

December 14, 2009

(signed) MICHEL G. PICHER
ARBITRATOR