

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

CASE NO. 3838

Heard in Montreal Thursday, 10 December 2009

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal the assessment of a 64 day suspension to Locomotive Engineer B. Chychul from June 3, 2008 to August 6, 2008 for “violation of CROR Rules 104, 106 & 142 at New Sarepta while working as locomotive engineer on train 44251 02 on June 2nd, 2008.”

UNION’S STATEMENT OF ISSUE:

On June 2, 2008, Mr. Chychul was the locomotive engineer assigned to train 44451 02 which was involved in running through a mail line switch in OCS territory. Mr. Chychul was required to attend an investigation on June 4, 2008, for an “alleged violation of OCS warning on switch and damage to switch at New Sarepta while on A 44451 02.” Subsequent to the investigation, Mr. Chychul was discharged. On August 5, 2008, Mr. Chychul’s discharge was modified to reflect a suspension from June 3, 2008 to August 6, 2008.

The Union contends that the Company failed to consider all mitigating factors which contributed to this incident. The Union contends that the assessed discipline is excessive and not in line with other incidents of a similar nature. The Union also contends that the Company violated article 86 of Agreement of agreement 1.2 through the failure to advise Mr. Chychul or his accredited representative of the initial or supplemental investigations that had occurred.

It is the Union’s position that Mr. Chychul’s discipline is unwarranted and should be expunged or, in the alternative, the discipline should be significantly reduced. Mr. Chychul should be compensated for all loss of wages or benefits.

The Company disagrees with the Union.

FOR THE UNION:

(SGD.) T. MARKEWICH
VICE-GENERAL CHAIRMAN

There appeared on behalf of the Company:

P. Payne	– Manager, Labour Relations, Edmonton
D. Brodie	– Manager, Labour Relations, Edmonton
D. Gagné	– Sr. Manager, Labour Relations, Montreal
R. Maze	– Chief Dispatcher, Edmonton
G. Belanger	– Engine Service Officer, Montreal

And on behalf of the Union:

D. Elliskson	– Counsel, Toronto
T. Markewich	– Sr. Vice-General Chairman, Edmonton
B. Willows	– General Chairman, Edmonton
P. Vickers	– General Chairman, Sarnia
R. Caldwell	– Sr. Vice-General Chairman, Belleville
R. Allen	– General Secretary/Treasurer, Saskatoon

B. Chychuk

– Grievor

AWARD OF THE ARBITRATOR

It is not disputed that the grievor did commit certain rules violations. On June 2, 2008 he was the locomotive engineer in charge of train 44451-02 which ran through a main line switch in OCS territory at New Sarepta on the Camrose Subdivision. While the grievor's crew did have clearance beyond the switch to Barlee, his OCS clearance document clearly contained a warning to the effect that the siding south switch at New Sarepta could be lined and locked in a reversed position. As the grievor explains it, he was distracted while talking to a trainee in the cab and simply forgot about the switch which was in effect run through. An investigation disclosed that not only did the grievor violate rules 104 and 106, but that CROR rule 142(a) was also violated as all members on his crew were not in fact in possession of or aware of the content of the OCS clearance document.

The only issue is the appropriate measure of discipline. The Union submits that a sixty-four day suspension, in effect a reinstatement of the grievor following an initial measure of discharge, is excessive in all of the circumstances.

The Union first raises a preliminary objection. It alleges that the grievor was not given notice of the disciplinary interviews given to his fellow crew members. The Arbitrator is satisfied that that allegation is not made out. Manager, Corridor Operations, Rick Maze was present at the hearing and testified, in the Arbitrator's view credibly, that he did verbally advise the grievor of the time and place of the investigations of his fellow crew members. There is not, in these circumstances, any violation of the procedural requirements for a fair and impartial investigation as contemplated within article 86 of the collective agreement.

With respect to the quantum of discipline, the Arbitrator is inclined to agree with the Union. It is in my view significant to appreciate that at the time of the events giving rise to this grievance the grievor had active Company service of thirty-five years. Most significantly, he has been assessed no demerit points since 1982. While he did receive a written reprimand in 1990 and another written reprimand on 2005, for a period of over twenty-five years he did record demerit free service. The Union points to the disciplinary treatment of other employees for rule 104 violations to stress that the typical discipline for a violation such as was committed by the grievor is at the level of twenty demerits. In the Arbitrator's view that is a correct assessment of the general pattern of treatment for the improper running through of a switch. In mitigation the Union also points to the fact that the grievor did immediately initiate an emergency radio broadcast as well as calling the RTC by telephone, as required in the circumstances. There were no injuries or significant damages, save a bent switch rod. Counsel for the Union questions how, in such a circumstance, an employee can be initially discharged and thereafter given the equivalent of a two month suspension.

The Arbitrator is compelled to agree. It is trite to say that each case must be determined on its own facts, and there is obviously no automatic penalty for the violation of CROR 104. However, in the Arbitrator's experience the assessment of discipline, particularly in relation to an employee of good prior service, has not extended to the level of discharge and suspension seen in the case at hand. In my view it is not insignificant that the grievor is an employee of thirty-five years' service whose record reflects the assessment of no demerits for more than twenty-five years before the incident which resulted in his two month suspension. In my view the Company simply failed to give proper weight to the quality of the grievor's prior service, in proportion to the rule infraction which was committed.

The grievance is there allowed, in part. The Arbitrator directs that the grievor be compensated for all wages and benefits lost for the period of his suspension, and that his record be amended to reflect the assessment of twenty demerits for the incident of June 2, 2008.

December 16, 2009

(signed) MICHEL G. PICHER
ARBITRATOR