

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

**CASE NO. 3849**

Heard in Montreal Wednesday, 14 January 2010

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**EX PARTE**

**DISPUTE:**

Discharge of Conductor James Pollock of Jasper for CROR rule 439 violation, pass stop signal at Union on August 14, 2009, while on Q10131-12.

**UNION'S STATEMENT OF ISSUE:**

On August 14, 2009, the grievor was working as a conductor on train Q10131-12. The assignment was required to travel light engine from Walker yard to McBain intermodal yard and assemble the train for departure to Jasper terminal. Enroute to McBain intermodal yard, the crew passed signal 61N at Union Junction, Mile 6.1 on the Edson Subdivision displaying a stop signal.

Through the investigative process the Company determined that the grievor and locomotive engineer had failed to stop train Q10131-12 at Signal 61N as required by CROR rule 439.

Conductor Pollock was discharged from Company service.

The Union contends that the grievor was denied notice and access to the locomotive engineer's statement, rendering the discipline void *ab initio*; there are many inconsistencies regarding the signal system and the length of time it took for the crew to be informed that they may have gone by a stop signal; and if in fact the grievor did pass a stop signal, the discipline assessed should be expunged or mitigated to a much lesser degree and the grievor be made whole.

The Company disagrees with the Union's contentions.

**FOR THE UNION:**

**(SGD.) R. A. HACKL**

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

- K. Morris – Sr. Manager, Labour Relations, Edmonton
- D. Crossan – Manager, Labour Relations, Prince George
- G. Karpo – Trainmaster, Jasper
- R. Karmali – Manager, S&C, Alberta Zone
- G. Guest – Assistant Superintendent, Melville

And on behalf of the Union:

- D. Ellickson – Counsel, Toronto
- B. Boechler – General Chairman, Edmonton
- R. A. Hackl – Vice-General Chairman, Edmonton
- R. Thompson – Vice-General Chairman, Edmonton
- R. Donegan – Local Chairman, Biggar
- J. Pollock – Grievor

**AWARD OF THE ARBITRATOR**

Having reviewed the evidence the Arbitrator is satisfied that the grievor's movement did, as the Company asserts, proceed through a stop signal in violation of CROR 439 on August 14, 2009. While the Union questions whether there was in fact a fault in the signal, there is no compelling evidence which the Arbitrator can find to ground that assertion. While there appears to have been some confusion in the mind of the rail traffic controller who dealt with the grievor's movement, the Company's own technical investigation and tests establish, to the Arbitrator's satisfaction, that there was no fault in the equipment which would explain what occurred. A more plausible explanation is that the signal which controlled the grievor's movement stood beside a separate signal governing another track at a time when the other signal displayed a restricting signal which would allow a movement to proceed.

Nor can the Arbitrator sustain the Union's suggestion that there was a violation of the grievor's procedural rights by the alleged failure to advise him of the time and place

of the disciplinary investigation in relation to his locomotive engineer. I am satisfied that the grievor and his Union representative were well aware of the general time and place of the commencement of the locomotive engineer's investigation, and that he was further advised as to the date of its continuation.

The real issue of substance in the case at hand is the appropriate measure of discipline. The Company submits that discharge is appropriate because the grievor has not acknowledged his error. On the other hand, as the Union presents the case, the grievor was never aware of having gone through a stop signal, and some doubt as to whether he did is prompted by the doubts which apparently existed in the mind of the rail traffic controller, notwithstanding the Company's own more rigorous technical verifications. On the whole I am inclined to conclude that the Company's approach is somewhat harsh. While the grievor is a relatively junior employee, he had never previously received any discipline prior to the incident which is the subject of this grievance. In the Arbitrator's view it is less than clear that he could not be rehabilitated by an alternative, albeit serious, measure of discipline. In the result, I deem it appropriate to direct that the grievor be reinstated into his employment forthwith, without compensation for any wages or benefits, and without loss of seniority. The time between his termination and reinstatement shall be recorded as a suspension for his violation of CROR rule 439 on August 14, 2009.

January 18, 2010

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**