

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

CASE NO. 3865

Heard in Montreal, Wednesday, 10 February 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

The assessment of thirty (30) demerits to Locomotive Engineer K. Fox for "Violation CROR 429, passing stop signal without authority, mileage 20.3 Redditt Sub on Train Q1073123 while employed as Locomotive Engineer on July 24, 2006".

UNION'S STATEMENT OF ISSUE:

On July 24, 2006, Mr. Fox was assigned as the locomotive engineer on train Q1073123 when he was unable to stop prior to passing a stop signal at Mile 20.3 Redditt Subdivision.

The Company conducted an investigation of the incident and determined the grievor had violated CROR Rule 429 (now Rule 439) and was therefore subsequently assessed 30 demerits.

The Union contends that the Company did not take into account the mitigating circumstances surrounding the incident and Mr. Fox's commendable discipline history and that the discipline is unwarranted and excessive.

The Union requested the Company reconsider the discipline assessed and expunge or, in the alternative, reduce the discipline and compensate Mr. Fox for all loss of wages and benefits.

The Company disagrees with the Union.

FOR THE UNION:

(SGD.) T. MARKEWICH

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

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| D. Brodie | – Manager, Labour Relations, Edmonton |
| K. Morris | – Sr. Manager, Labour Relations, Edmonton |
| P. Payne | – Manager, Labour Relations, Edmonton |

And on behalf of the Union:

- M. Church – Counsel, Toronto
- B. Willows – General Chairman, Edmonton
- T. Markewich – Sr. Vice-General Chairman, Edmonton
- R. Leclerc – General Chairman, CN Lines East, Grand-Mère
- K. Fox – Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that by reason of his own admitted error of judgement, Locomotive Engineer Fox operated his train past a stop signal at mileage 20.3 of the Redditt Subdivision on July 24, 2006. The record indicates that Locomotive Engineer Fox was aware of the preceding “clear to stop” signal which his train had encountered as it approached the location where the stop signal was eventually met. It would seem that he had an understanding that his movement was to meet another train. Unfortunately, he formed the incorrect view that the signal he would later encounter would in fact be a restricting signal which would direct his train into the siding. In anticipation of that fact he did not reduce the speed of his movement sufficiently to stop in time when in fact he and his conductor saw the stop signal before them. What occurred was plainly a violation of what was then CROR Rule 429 (now CROR Rule 439) caused by the error in judgement of Locomotive Engineer Fox.

The Company stresses that in the past discipline for such violations has consistently been recognized as being in the order of thirty to forty demerits . Its representative stresses that the assessing of thirty demerits against Mr. Fox, rather than a higher number, was in recognition of his remorse in the face of what had occurred and his forthrightness during the Company’s investigation. Counsel for the Union submits

that the assessment of thirty demerits was excessive considering that this was the first rules infraction, and the first discipline, encountered by Locomotive Engineer Fox in what was then some twenty-five years of service.

The Arbitrator can appreciate the value of the grievor's prior service and the argument made by the Union. However, it is well established in the jurisprudence of this Office that cardinal rules infractions must be viewed seriously, no matter what the circumstances. There is arguably no more critical cardinal rule than CROR 439, the requirement to stop a train, the violation of which is obviously fraught with the most dangerous of possible consequences. While no damage to equipment or injuries was encountered in the incident here under examination, the error committed by Locomotive Engineer Fox was most serious, arguably a textbook example of the danger of a train crew making assumptions about signals which lie ahead of them.

In the Arbitrator's view the assessment of thirty demerits was within the appropriate range of discipline, and should not be disturbed. For these reasons the grievance must be dismissed.

February 19, 2010

(signed) MICHEL G. PICHER
ARBITRATOR