

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

CASE NO. 3881

Heard in Calgary, Wednesday, 10 March 2010

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the termination of Locomotive Engineer Ken Cranston effective May 7, 2008.

JOINT STATEMENT OF ISSUE:

On May 7, 2008, Engineer Cranston's was issued a Form 104 indicating his employment was terminated by the Company for failing, "to ensure your train was operated in a safe and controlled manner, as evidenced by a tail-end collision with preceding train 292-05 at Centennial, Weyburn subdivision, on April 7, 2008; a violation of CROR Rule 303 (b) and (c), CROR Rule 303.1, CROR Rule 90 and SSI, CROR Rule 106 (a), CROR Rule 106 (d), GOI Section 16, 1.1;1.2, CROR General Notice, and CROR General Rule A (i), (iii), (iv), and (vi)."

The Union contends that there is no cause for discipline in the circumstances, or in the alternative, that the penalty of discharge is excessive.

The Union requests that Mr. Cranston be reinstated without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and denies the Union's request.

FOR THE UNION:

(SGD.) D. ABLE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. McFARLANE
ASSISTANT VICE-PRESIDENT – OPERATIONS

There appeared on behalf of the Company:

B. Deacon	– Labour Relations Officer, Calgary
R. Wilson	– Assistant Vice-President, Industrial Relations, Calgary
J. Bairaktaris	– Director, Labour Relations, Calgary
A. A. Garcia	– Manager, Labour Relations, Calgary
D. Corrigan	– Labour Relations Officer, Calgary
V. White	– Assistant Labour Relations Officer, Calgary
D. Purdon	– Manager, Operations, Moose Jaw

D. Burke – Project Specialist, Calgary

And on behalf of the Union:

M. A. Church – Counsel, Toronto
 D. Able – General Chairman, Calgary
 G. Edwards – Sr. Vice-General Chairman, Revelstoke
 R. Purtill – Local Chairman, Moose Jaw
 D. Olson – General Chairman (CTY), Calgary
 D. Fulton – Vice-General Chairman (CTY),
 G. Hiscock – Local Chairman (CTY), Moose Jaw
 B. Wiszniak – Local Chairman (CTY), Regina
 R. Millar – Conductor
 K. Cranston – Grievor

AWARD OF THE ARBITRATOR

Sadly, the material before the Arbitrator confirms that the grievor was principally responsible for an extremely serious collision and derailment involving three trains at Centennial on the Weyburn Subdivision on April 7, 2008. The grievor and his conductor, Ms. Rhonda Millar, were the crew of train 498-07 operating southward on the Weyburn Subdivision with a train consisting of two locomotives, thirty-five loaded cars and two empties. Train operations between Pasqua and North Portal on the subdivision are under the Occupancy Control System, also referred to as “dark territory” where signals do not govern the movement of trains. As the area is largely single track with trains operating in both directions, trains may generally not advance into a given area until they know that another train has reported its departure from a given location.

As the grievor’s train proceeded southwards he and his conductor received a clearance to proceed, protecting against train 292-045, which was also proceeding southward ahead of them. At 07:30 the grievor’s train received a clearance with operating authority which allowed its movement from the south siding switch at Weyburn to the south siding switch at Centennial, however protecting against train 292-

05 from the north siding switch at Centennial. In other words, the grievor's train could not proceed past the north siding switch at Centennial without express permission from train 292-05.

As the grievor's movement approached Ralph at Mile 94.0 on the Weyburn Subdivision he and his conductor failed to announce on the standby channel the location of their first restriction, the north siding switch at Centennial. That was a violation of CROR Rule 90. It appears that Conductor Millar was then in touch with the RTC, requesting more authority to advance towards train 292-05 beyond the north siding switch. At that point the grievor and his conductor were told that train 292-05 was stopped at Centennial awaiting the arrival of northbound train 497-04. The plan was for the northbound train to take the siding at Centennial, after which train 292-05 would be free to proceed. It appears that both crew members were surprised to learn of the location of train 292-05 as it would normally run at a more substantial distance ahead of them. Unfortunately, even after this discussion, by the grievor's own admission, he then planned to stop at the south switch at Centennial, notwithstanding that his authorization was only to the north siding switch and his notification that train 292-05 was then stopped at Centennial.

When the crew reached mile 95.1 they received "close-up" instructions from train 292-05. That allowed their train to move past the north siding switch and approach the section of track that was occupied by train 292-05. In other words they were authorized to move closer to the train which they were still advised was then stopped. Contrary to

CROR Rule 303.1(e), neither the grievor nor his conductor wrote down the close-up instructions. Additionally, when Conductor Millar called out the close-up restriction when they reached the mile board for Centennial, the grievor failed to acknowledge the communication which she was then making on the radio, as required by CROR Rule 90.

The record reflects that as the crew approached the north switch at Centennial, Conductor Millar was preoccupied with paper work. It is not disputed that the sight lines at that location were unobstructed and that conditions were clear on a sunlit day, with no impediment to the crew's vision of the track ahead of them. From a distance of approximately two miles the grievor could see train 292-05. He had previously been advised that it was stopped. He nevertheless continued to operate his movement so as to stop it at the south siding switch at Centennial, a point beyond the stationary train which was now in his sight. It appears that at or about that time train 497-04 had entered the siding and come to a stop. As Conductor Millar and Locomotive Engineer Cranston passed train 497-04 they waved to the train's crew. At that point Conductor Millar looked up from her paperwork and saw that train 292-05 was in fact stationary. When she said to the grievor "They're not moving!" Locomotive Engineer Cranston began to make a brake application. He did not then resort to the emergency brake, apparently believing that a normal brake application would allow them to stop in time. It appears that his regular brake application lasted some thirty seconds. His judgement in that regard was woefully inadequate.

Shortly thereafter, after thirty seconds of normal brake application, the grievor placed his train into emergency braking mode, but not soon enough to prevent a collision with the rear end of train 292-05 at a speed of 19.5 miles per hour. The ensuing collision was enormous, derailing a total of ten cars on three separate trains and igniting fire which forced the evacuation of local residents.

Although there were no fatalities or serious injuries, the consequences of the collision were extreme. A total of ten cars from three trains were involved in a main track derailment, causing the closure of the Weyburn Subdivision for some thirty hours, after which only the siding was available for a substantial period for the movement of through traffic. A fire was ignited involving five of the derailed cars, burning for some twenty-four hours and requiring the evacuation of the public in the area. Highway 39, the main Saskatchewan border crossing route, was required to be closed for twenty-four hours. The Company was thereafter compelled to engage in four weeks of environmental clean up to remove some 4,700 metric tonnes of soil as a result of the leakage of a tank car of glycol onto the ground. The environmental damage has required the Company to provide two years of well samples to test for ground water contamination and, it does not appear disputed, the general damage from the collision mounted into the millions of dollars.

During the course of the ensuing disciplinary investigation the grievor was asked why he believed he had authority to move to the south switch at Centennial when in fact

he had received instructions from train 292-05 to perform nothing more than a close-up.

His answer is as follows:

Prior to any of these discussions I believed that we would be going to the south switch. I thought they would be long gone when we arrived, unfortunately they were not and I did not recognize this until it was too late.

Following the disciplinary investigation the Company dismissed the grievor for the tail end collision and for his violation of the various operating rules as cited in the joint statement of issue.

There is no dispute that the grievor committed a number of grave errors in the operation of his train on the day in question. Perhaps most disturbingly, he continued to operate under an assumption which was entirely contrary to the objective facts which had been communicated to him repeatedly, most particularly that at all relevant times train 292-05 was stopped just north of the south siding switch at Centennial. Notwithstanding repeated communication of that fact to him, Locomotive Engineer Cranston continued to operate in the belief that he should handle his train so as to come to a stop at the south siding switch, in an area plainly occupied by the other train. His failure to properly seize the reality which was unfolding was the primary cause of the disastrous rear-end collision which resulted, derailing parts of three separate trains, igniting a substantial fire and causing a serious environmental spill, substantial disruption to local residents and the closing of an important highway.

The sole issue in these proceedings is the appropriate measure of discipline. In defence of the grievor counsel for the Union points to an investigation report prepared

by the Transportation Safety Board of Canada following the incident. He draws to the Arbitrator's attention the comment within that report to the effect that the grievor may have thought that train 292-05 was moving southwards as he approached it, because of a possible visual illusion created by the northward movement of train 497-04 in the siding adjacent to it. With the greatest respect, and bearing in mind that the TSB report expressly states that it does not seek to determine liability or responsibility, the Arbitrator cannot share the Union's view on this aspect of the evidence. Most significantly, throughout the investigation procedure conducted by the Company Locomotive Engineer Cranston never expressed any recollection of believing that he saw train 292-05 moving away from him. To the contrary, his repeated assertions during the investigation process were to the effect that he had always believed that he should handle his train so as to come to a stop at the south siding switch at Centennial, a premise entirely inconsistent with the facts on the ground, as reviewed above. For reasons which only he can understand, he appears to have paid no meaningful attention to repeated information telling him that in fact train 292-05 was stopped at Centennial, having received no other information or communication to the contrary.

Are there mitigating circumstances which would suggest that termination is not appropriate in the case at hand? Regrettably, the Arbitrator cannot so conclude. While Mr. Cranston is an employee of some thirty years' service, the record confirms that he has had a long series of operating rules violations over the years. Having been disciplined a total of nineteen times over his career, he received twenty demerits less than a year prior to the incident here under examination when he failed to restore a

main track switch to its normal position, running through the switch as a result. Earlier, in 2005 his failure to properly judge the speed of his train caused him to fail to stop short of the north siding switch at Wilcox, causing a run-through of that switch. In fact, he was involved in unsafe operating practices on at least nine occasions prior to the culminating incident that is the subject of this arbitration. On the whole, having close regard to the fact of the case and to the grievor's prior service, the Arbitrator can understand the perception of the Company and does not consider this an appropriate case for a reduction of penalty.

The grievance must therefore be dismissed.

March 16, 2010

(original signed by) MICHEL G. PICHER
ARBITRATOR