

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

**CASE NO. 3939**

Heard in Montreal, Wednesday, 13 October 2010

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the assessment of 25 demerit marks to Locomotive Engineer K. Bernhard for "Violation of CROR 114(b), 104(h), 123.2, and 13 causing a run through switch at Mile 74.4 Blackfoot Subdivision on train L50741-04, on May 04, 2010, while employed as Locomotive Engineer.", and his resulting discharge for accumulation of demerit marks in excess of sixty, effective May 26, 2010.

**JOINT STATEMENT OF ISSUE:**

On May 4, 2010, Mr. Bernhard was assigned as the locomotive engineer on Train L50741-04 when he ran through the mainline switch at Mile 74.4, Blackfoot Subdivision.

The Company conducted an investigation of the incident and determined that Mr. Bernhard had violated CROR Rules 114(b), 104(h), 123.2, and 13, and subsequently assessed him with 25 demerit marks, and discharged him for accumulation of demerit marks in excess of sixty.

The Union's appeal contended that the discipline assessed was excessive under the circumstances and that the Company did not take into account all of the mitigating factors. The Union requested that the Company reconsider the discipline assessed and significantly reduce the discipline and make Mr. Bernhard whole for all lost wages and benefits.

The Company disagrees with the Union's contentions.

**FOR THE UNION:**

**(SGD.) T. MARKEWICH**

FOR: GENERAL CHAIRMAN

**FOR THE COMPANY:**

**(SGD.) D. BRODIE**

MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

- |           |   |
|-----------|---|
| D. Brodie | – Manager, Labour Relations, Edmonton     |
| K. Morris | – Sr. Manager, Labour Relations, Edmonton |
| P. Payne  | – Manager, Labour Relations, Edmonton     |
| T. Brown  | – General Manager Operations, Winnipeg    |

D. Broesky – Trainmaster, Winnipeg

And on behalf of the Union:

M. A. Church – Counsel, Toronto  
T. Markewich – Vice-General Chairman, Edmonton  
K. Bernhard – Grievor

### **AWARD OF THE ARBITRATOR**

The grievor was assessed twenty-five demerits for a run-through of a mainline switch. On May 4, 2010 he was the locomotive engineer operating a road switcher assignment on the Blackfoot Subdivision at Lloydminster. During the crew's assignment they delivered eighteen cars into a siding of a commercial customer, Plains Marketing. While doing so they had properly restored the mainline switch behind them to its normal position. After the cars were delivered it appears that the grievor's assistant conductor, B. Wildey, gave him a verbal instruction to back the locomotive to the mainline switch. As the grievor did so he was required to stop to allow the crew to restore a derail to its position. With his assistant conductor still on the ground, the grievor then continued in his reverse movement, running through the mainline switch which was obviously positioned against his movement, causing his locomotive to foul the mainline. However, it is not disputed that the grievor clearly had authority to be on the mainline at that point in time.

Following an investigation the Company assessed twenty-five demerits against the grievor for his violation of CROR rules 114(b), 104(h), 123.2 and 13. The Arbitrator cannot agree that the facts disclose a violation of CROR 104(h) by the grievor. That rule speaks exclusively to the manner in which main track, hand operated switches are

to be handled and establishes as a general rule that "... main track switches must be left lined and locked in normal position." While the grievor obviously ran afoul of the switch in question, he cannot be charged with having violated the provisions of CROR 104(h).

I am satisfied that he did violate CROR rule 113 by failing to sound his bell when he set his locomotive into motion. There can also be no doubt that the grievor violated CROR 114 which prohibits fouling a track until the switches connected with the move are properly lined. That was clearly violated by the grievor in the case at hand. I am also satisfied that the grievor did not comply with the standards of CROR 123.2 which governs switching by radio and, among things, stipulates that clear instructions, including estimates of the distance to travel, are to be given. That was clearly not done in this case.

On the whole the material before the Arbitrator reveals that the grievor simply forgot that the main track switch was not lined for his reverse movement. The issue of substance therefore becomes the appropriate measure of discipline in all of the circumstances.

In the Arbitrator's view there are mitigating factors to be considered. Firstly, in a career of close to thirty-two years the grievor had been involved in receiving discipline for rules infractions on no more than four previous occasions. In the Arbitrator's view it is difficult to characterize him as an employee with a pattern of operating rules

violations. Secondly, the incident in question did not involve the grievor's movement entering territory over which it held no authority and did not result in any substantial damage to equipment, including the switch in question. Perhaps most significantly, the grievor's long years of service would, in my view, justify the awarding of a second chance to demonstrate that he can perform the duties of a locomotive engineer in a manner that is safe and conforms with all operating rules. Should he fail to do so, obviously he would be liable to serious consequences.

The grievance is therefore allowed, in part. The Arbitrator directs that Locomotive Engineer Bernhard be reinstated into his employment forthwith, without loss of seniority and without compensation for his wages and benefits lost.

October 18, 2010

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