

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

CASE NO. 3941

Heard in Montreal, Wednesday, 13 October 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the assessment of 10 demerit marks to Locomotive Engineer G. (Ben) Foreman for violation of CROR Rule 157(i), and CROR General Rule A(ii) on August 17, 2009.

JOINT STATEMENT OF ISSUE:

On August 17, 2009, Mr. Foreman was assigned as the locomotive engineer on Train M30341-17. At Bloom, on the Rivers Subdivision, Trainmaster Miles Rutherford boarded Mr. Foreman's train. While conducting a job briefing with the train's crew, Trainmaster Rutherford discovered that Mr. Foreman was not in compliance with CROR Rule 157(i), as he had not initialed the appropriate locations on his TGBOs, nor with CROR General Rule A(ii) as he did not have an up-to-date Dangerous Goods Section in his Operating Manual.

The Company conducted an investigation of the incident and assessed discipline in the form of 10 demerit marks.

The Union contends that the discipline was excessive, and failed to take into account all of the mitigating factors. The Union requested that the Company reconsider the discipline assessed and significantly reduce it.

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:

P. Payne	– Manager, Labour Relations, Edmonton
D. Brodie	– Manager, Labour Relations, Edmonton
K. Morris	– Sr. 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
G. B. Foreman – Grievor

AWARD OF THE ARBITRATOR

The record discloses that on August 17, 2009 the grievor and his crew operated train 303 between Winnipeg and Rivers, Manitoba. During the course of their tour of duty Trainmaster Miles Rutherford boarded their train and at Bloom Station. Following a job briefing the trainmaster made a check of the crew's documentation. During the course of that check he found that Mr. Foreman had not initialled two items on the front page of his TGBO, although he had in fact initialled the pages and signed the last page as required. He also found that the grievor could not produce his medical card for verification and that he did not have in his own possession an up-to-date "Dangerous Goods section" in his operating manual.

As a result of the trainmaster's finding, the grievor was given a notice to attend at a disciplinary investigation, following which he was assessed ten demerits for his failure to have properly initialled the TGBO and for his not having an up-to-date operating manual with respect to dangerous goods. Specifically, he was charged with violating CROR 157 which deals with the Tabular General Bulletin Order as well as CROR General Rule A(ii), which provides as follows:

- A** Every employee in any service connected with movements, handling of main track switches and protection of track work and track units shall;

...

- (ii)** have a copy of this rule book, the general operating instructions, current time table and any supplements, and other documents specified by the company accessible while on duty;

The Company ultimately took no issue with the grievor not having his medical card, as in fact it appears that he did have it in his personal bag at the time, although he was unable to find it then.

The Union submits that in fact there was no violation of General Rule A. Its representatives note that while it is true that the grievor's own copy of the operating manual was lacking the up-to-date pages with respect to dangerous goods, there was in the cab of the locomotive a complete and up-to-date copy of the operating manual, being the manual in the possession of the crew's conductor. In determining whether the grievor violated the rule it would have to be found that he did not have a copy of the operating instructions or the operating manual "... accessible while on duty." As the Union stresses, the rule is particularly fashioned in recognition of the fact that employees, as for example those performing road and yard switching, may find themselves in circumstances where they cannot conveniently carry a current operating manual with them. In those circumstances having a manual available in the cab of the locomotive is considered to be satisfactory. Similarly, in the case at hand there is no doubt but that a proper copy of the operating manual was accessible to the grievor while on duty. Indeed, the Union's counsel stresses that during the course of his pre-job

briefing with his conductor they had specifically adverted to the new dangerous goods rules which were in the conductor's own manual.

On the whole, having close regard to the facts, the Arbitrator cannot find that the Company has established a violation of General Rule A(ii) by Mr. Foreman. The evidence does confirm that Mr. Foreman did fail to initial two parts of the first page of his TGBO. These were the parts which involved the identification of his train and the identification of the territory over which the train would operate. There is, however, a mitigating factor to be taken into consideration with respect to that failure. As reflected in Mr. Rutherford's own memorandum, when he spoke to Mr. Foreman about not having initialled the "applicable on" and "train designation" portion of the first page of the TGBO Mr. Foreman responded to him that his training supervisor, Harvey Harapiak, told him during the course of his most recent rules class that it was not necessary to do so. That statement by the grievor is not challenged by the Company. In the Arbitrator's view that must be viewed as a mitigating factor of some significance. Indeed it appears that Mr. Rutherford undertook that he would correct Mr. Harapiak, which presumably was done.

On the whole, I am not satisfied that the facts disclose grounds for the assessment of ten demerits against the grievor. At most a counselling with respect to the proper initialling of the TGBO would have been appropriate, especially given that the grievor appears to have been incorrectly counselled otherwise by a member of management.

The grievance is therefore allowed. The Arbitrator directs that the ten demerits assessed against the grievor be removed from his record forthwith.

October 18, 2010

(signed) MICHEL G. PICHER
ARBITRATOR