

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

CASE NO. 3942

Heard in Montreal, Wednesday, 13 October 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the assessment of 45 demerit marks to Locomotive Engineer G. (Ben) Foreman for "Violation of CROR 439 at Signal 91.2 Canyon West, Redditt Subdivision while working as Locomotive Engineer on W90141-06, June 6, 2010", and his resulting discharge for accumulation of demerit marks in excess of sixty, effective June 24, 2010.

JOINT STATEMENT OF ISSUE:

On June 6, 2010, Mr. Foreman was assigned as the locomotive engineer on Work Train W90141-06 when he failed to stop prior to passing a stop signal 91.2, Canyon West, on the Redditt Subdivision.

The Company conducted an investigation of the incident and determined Mr. Foreman had violated CROR Rule 439 and subsequently assessed him with 45 demerit marks and discharged him for accumulation of demerit marks in excess of sixty.

The Union's appeal contended that the discipline assessed was extremely 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 expunge or, in the alternative, significantly reduce the discipline and compensate Mr. Foreman 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:

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 material confirms that the grievor did operate his work train in such a way as to fail to stop at Signal 91.2, Canyon West on the Redditt Subdivision on June 6, 2010. It appears that he was operating the locomotive on a work train consisting of two ballast cars at the time. The position of the locomotive was reversed, as a result of which the grievor was effectively on the left side of the locomotive with the “long nose” section of the locomotive in front of him. As a result, his view of the right side of the track was substantially restricted.

It is not disputed that as the grievor’s train passed the approach signal to Station Canyon it displayed a “clear to stop” signal. According to the grievor’s account he then thought the crew would soon see the one mile board to Canyon, which would give him an indication as to when to slow his train in order to stop. In fact the one mile board, which was on the other side of the locomotive, was not seen by his conductor who was seated in the position to observe it. I am satisfied that the grievor’s location in the locomotive would not have allowed him to see the one mile board. I am also satisfied that he would not have been physically able to view the stop signal at Station Canyon as he approached it. It was only when his conductor called out the stop signal that the grievor applied the train’s emergency brake, as a result of which his movement did

partially move past the stop signal. There is no dispute that the grievor then took all the proper steps, communicating the event to the Rail Traffic Controller and awaiting further instructions.

In essence the Union argues that because of his unique position in the locomotive, with no direct line of sight to either the mile board or to the stop signal, Locomotive Engineer Foreman was entirely reliant on his crew for the necessary information that would allow him to make a proper stop. The Company's representatives counter that no matter the conditions, it was incumbent upon the grievor to be aware of the location of his train at all times and to ensure that it was operated in such a way as to stop at the forthcoming signal, of which Mr. Foreman was aware.

In the Arbitrator's view the grievor must be found to have failed to comply with the operating rules, and in particular to have violated CROR 439 at Signal 91.2 at Canyon West, as alleged. The larger question is the appropriate measure of discipline.

The Arbitrator must agree that the physical circumstances surrounding the incident do provide a degree of mitigation with respect to the culpability of the grievor overall. It does not appear disputed that the first obligation to see and report the mile board as well as the stop signal was that of his conductor, whose sight lines in that respect were entirely clear. The fact remains, however, that the grievor's own failure to ensure that he had a precise understanding as to the location of his train did contribute

to the rule violation and that he did render himself liable to a serious degree of discipline.

A further element of mitigation is the grievor's twenty-two years of service. While that service is not without prior discipline, his record is not noted for cardinal rules violations.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for his wages and benefits lost. The forty-five demerits shall be removed from his record which shall stand at thirty demerits at the time of his reinstatement.

October 18, 2010

(signed) MICHEL G. PICHER
ARBITRATOR