

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

**CASE NO. 3972**

Heard in Montreal, Wednesday, 12 January 2011

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal the assessment of a discharge to Locomotive Engineer G. Kamlade for "circumstances surrounding your train handling policy violation and CROR Rule 439 violation while on the CP Thompson Subdivision with train M34551-26 on June 27, 2010." (sic)

**JOINT STATEMENT OF ISSUE:**

On June 27, 2010, Mr. Kamlade was assigned as the locomotive engineer on train M34551-26 when he was unable to stop prior to passing a stop signal at Basque West on the Thompson Subdivision. Despite the passing of the stop signal no damage was done. The Company conducted an investigation of the incident and determined the grievor had violated CROR Rule 439 and was therefore subsequently discharged.

The Union contends that the Company did not take into account the mitigating circumstances surrounding the incident and that the discipline is excessive. The Union contends a violation of article 86 given the investigation was not fair nor impartial.

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

The Company disagrees with the Union.

**FOR THE UNION:**

**(SGD.) T. MARKEWICH**  
FOR: GENERAL CHAIRMAN

**FOR THE COMPANY:**

**(SGD.) D. CROSSAN**  
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Crossan

D. VanCauwenbergh

– Manager, Labour Relations, Prince George

– Director, Labour Relations, Toronto

J. Orr

– Assistant Vice-President, BC South

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Toronto
B. Willows	– General Chairman, Edmonton
T. Markewich	– Sr. Vice-General Chairman, Edmonton
B. R. Boechler	– General Chairman, Edmonton
R. A. Hackl	– Vice-General Chairman, Edmonton
G. Kamlade	– Vancouver

### **AWARD OF THE ARBITRATOR**

The record before the Arbitrator confirms that the grievor was the locomotive engineer on train M35451-26 on June 27, 2010, operating on the Thompson Subdivision. During the course of his tour of duty his train encountered a clear to stop signal at signal 584. That indicated to the grievor and his conductor that they should be prepared to stop at the upcoming signal at Basque West, a distance of less than two miles. It is not disputed that they failed to stop before the signal at Basque West, travelling some 225 feet beyond the signal before their train came to a stop. That stop was initiated by the application of the train's emergency braking system some 250 feet before the stop indication being displayed at signal 568. No damage or injuries occurred as a result of the violation of CROR Rule 429 by the grievor and his conductor, and they duly complied with all necessary procedures from that point onwards.

During the course of the disciplinary investigation when asked why he had not attempted to slow his train in a controlled manner in preparation for the stop at signal 568 Mr. Kamlade stated that he and his conductor had commenced a conversation respecting a 25 mph slow zone which they were approaching. He also indicated that he

might subconsciously have expected that the signal would be permissive when they reached it. The Company concluded that in fact the operating element which caused the rule violation was the grievor's hope that the signal would change and that he would not need to bring his train to a stop, a hope which was obviously not realized. It therefore concluded that the grievor was less than forthcoming in his explanation of the events and effectively raised the purported conversation about the reduced speed zone as a manufactured distraction to diminish the suggestion that he was simply anticipating a change in signal.

I do not consider it necessary to resolve the merits of the two opposing theories of what might have transpired in the locomotive cab to cause the rule violation which occurred. On either theory, the grievor must be found responsible for a clearly avoidable violation of CROA rule 439. There is no dispute that he had ample visibility of the stop signal from a distance of some 1,200 feet, with all the opportunity necessary to handle his train so as to bring it to a controlled stop. Even accepting the grievor's explanation, that he was distracted in a conversation with his conductor, there can be little doubt that he committed a grave error and negligence in failing to advert and respond to the signal in sufficient time to stop his train properly. If it were necessary to choose as between the two versions of events offered by the parties, bearing in mind that the Company bears the burden of proof, I would be inclined to accept the uncontradicted evidence of the grievor that he lost concentration by reason of his conversation with his conductor.

The real issue in this grievance is the appropriate measure of discipline. In considering that question there are both aggravating and mitigating factors to take into account. The most aggravating factor is that this appears to have been the second violation of Rule 439 by the grievor. In October of 1993 he received thirty demerits for that infraction while operating on the Yale Subdivision. As counsel for the Union stresses, however, the grievor has not received demerits for any operating rule violation for some seventeen years prior to the incident here under review. I am satisfied that that record, coupled with the grievor's thirty-five years of service to the Company does justify a substitution of penalty, albeit a severe one.

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 any wages and benefits lost. The period between the grievor's discharge and reinstatement shall be recorded as a suspension.

January 17, 2011

(signed) MICHEL G. PICHER  
ARBITRATOR