

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

CASE NO. 4004

Heard in Montreal, Tuesday, 10 may 2011

Concerning

VIA RAIL CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The assessment of a sixty (60) day suspension assessed to Locomotive Engineer John Cummings.

JOINT STATEMENT OF ISSUE:

On November 10, 2009 Mr. John Cummings was assessed a 60 day suspension for "Failure to comply with CROR Rules 141(a), 142(a) and (b), and failure to manually protect a public crossing at grade Mile 146.7 Kingston Subdivision as instructed in Form V message on October 22, 2009 while working as a locomotive engineer on Train No.. 44."

The Union contends that a 60 day suspension of Locomotive Engineer Cummings is unwarranted and excessive in all of the circumstances.

The Union requests that the discipline be removed in full and Locomotive Engineer Cummings be ordered whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the arbitrator see fit.

The Corporation maintains that Mr. Cummings failed to comply with CROR rules and also failed to manually protect a public crossing at grade. Under the circumstances the Corporation considers the assessment of discipline warranted and appropriate.

FOR THE UNION:

FOR THE CORPORATION:

(SGD.) WM. MICHAEL

(SGD.) D. STROKA

GENERAL CHAIRMAN

SENIOR ADVISOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

D. Stroka	– Senior Advisor, Labour Relations, Montreal
W. Buckley	– Manager, Train Operations, London
B. A. Blair	– Senior Advisor, Labour Relations, Montreal
J. Mailhot	– Advisor, Labour Relations, Montreal

S. Hazeltine – Foreman, A&B Rail Services

There appeared on behalf of the Union:

M. A. Church – Counsel, Toronto
Wm. Michael – General Chairman, Kitchener
P. Hope – Vice-General Chairman
P. Kozusko – Observer

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond dispute, that the grievor was involved in a serious rule violation in the operation of train 44 from Toronto to Ottawa on October 22, 2009. Mr. Cummings, who was the In Charge Locomotive Engineer received instructions from the RTC while enroute, advising that he and his operating engineer must manually protect against a defective crossing at Mile 146.7, a location estimated to be some twenty-six minutes from where they were then located between Kingston and Brockville on the Kingston Subdivision. In fact, as they busied themselves with other rule 42 restrictions which would affect them, they forgot about the unprotected crossing and went through it at extremely high speed. It is common ground that they stopped their train and reported their infraction to the RTC. Following a disciplinary investigation the grievor was assessed with a suspension of sixty days.

The only issue in this arbitration is whether the penalty assessed was excessive.

I am satisfied that the discipline assessed was appropriate. Unfortunately, although he has some twenty-five years of service, during nineteen of which he has been a locomotive engineer, there are prior incidents in the grievor's record which

cause concern. Particularly, it appears that in January of 2003 the grievor was assessed discipline for operating his train through a foreman's protected work limits without proper authority. In 2006, in an incident relatively similar to the incident at hand, he operated his train through a public crossing on the Kingston Subdivision at 92 miles per hour when that crossing was subject to a speed restriction of 10 miles per hour. While the latter incident may have involved inadvertence or inattention, that does not detract the severity of the grievor's actions. The instant event, which occurred some three years later, gives pause as to whether the grievor truly benefited from the discipline previously assessed.

While I appreciate that a 60 day suspension is not inconsiderable, the grievor's error, which is in the nature of a serious repeat offence, does justify such a result. For these reasons the grievance must be dismissed.

May 16, 2011

(signed) MICHEL G. PICHER
ARBITRATOR