

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

**CASE NO. 4005**

Heard in Montreal, Tuesday, 10 may 2011

Concerning

**VIA RAIL CANADA INC.**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The assessment of a six (6) month suspension of Locomotive Engineer Peter Kozusko.

**JOINT STATEMENT OF ISSUE:**

On November 10, 2009 Mr. Kozusko was assessed a six (6) month 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 the six month suspension of Mr. Kozusko is unwarranted and excessive in all of the circumstances. The Union further contends that the six month suspension is discriminatory (that is disproportional) compared to the penalties previously other employees in analogous circumstances.

The Union requests that the discipline be removed in full and Locomotive Engineer Kozusko 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. Kozusko failed to comply with CROR rules and also failed to manually protect a public crossing at grade. The Corporation submits that in the past Mr. Kozusko was assessed discipline for similar rule violations. Under the circumstances the Corporation considers the assessment of discipline warranted and appropriate.

**FOR THE UNION:**

**(SGD.) WM. MICHAEL**  
**GENERAL CHAIRMAN**

**FOR THE CORPORATION:**

**(SGD.) D. STROKA**  
**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 – Grievor

### **AWARD OF THE ARBITRATOR**

The facts in relation to the instant case are related in **CROA&DR 4004** and need not be repeated. The grievor, Locomotive Engineer Peter Kozusko, was the Operating Engineer on train 44 when it failed to stop and perform manual signalling at a public crossing, proceeding through the crossing at extremely high speed.

As in case 4004, the sole issue in the case at hand is the appropriate measure of discipline. The record discloses that while Mr. Kozusko is a long service employee, his prior discipline is cause for concern. It includes a rule 429 violation in November of 2002 and the derailment of a train in March of 2005 when he operated his train through a 15 mile per hour crossover at a speed in excess of 60 miles per hour. Additionally, he incurred discipline in 2006 for the unauthorized movement of a train at Union Station and in 2007 for backing his train over a derail, which resulted in the derailment of two cars. All of the foregoing discipline arose during his ten years of service as a locomotive engineer.

While I acknowledge that a six month suspension is extremely serious, I am not persuaded that it was excessive in all of the circumstances of the case at hand. The grievance must therefore be dismissed.

May 16, 2011

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