

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4101**

Heard in Montreal, Wednesday, 11 April 2012

Concerning

VIA RAIL CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The discipline and dismissal of Locomotive Engineers S. Gauvreau and P. Dagenais.

JOINT STATEMENT OF ISSUE:

On October 30, 2011 Locomotive Engineers S. Gauvreau and P. Dagenais were operating Via Train #61 between Montreal and Toronto when they went through a 45 mile per hour crossover at 74 mph.

The Union contends that there is no just cause for Messrs. Gauvreau's and Dagenais' discharge, and that the penalty is unwarranted and excessive in all circumstances.

The Union requests that the discipline be removed and that Messrs. Gauvreau and Dagenais be reinstated without loss of seniority and benefits, and that they be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Corporation submits that Messrs. Dagenais and Gauvreau committed serious rule violations, deliberately concealed the event and chose not to report the incident to the proper authorities as required.

The incident was discovered by chance following a passenger complaint.

The Corporation maintains that the bond of trust between employer and employee has been breached and it cannot be restored. Under the circumstances, the discipline and dismissal of Messrs. Dagenais and Gauvreau was warranted and appropriate.

FOR THE UNION:

(SGD.) WM. MICHAEL
GENERAL CHAIRMAN

FOR THE CORPORATION:

(SGD.) D. STROKA
SR. ADVISOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

D. Stroka	– Sr. Advisor, Labour Relations, Montreal
M. Lavallée	– Sr. Manager, Train Operations, Montreal
B. A. Blair	– Sr. Advisor, Labour Relations
V. Herbeuval	– Stagiaire
G. Savarin	– Sr. Advisor, Labour Relations, Montreal

There appeared on behalf of the Union:

P. Boucher	– Arbitration Representative,
Wm. Michael	– General Chairman,
S. Mitchell	– Local Chairman, Montreal
P. Dagenais	– Grievor
G. Seale	– Locomotive Engineer, Montreal

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms, beyond controversy, that the grievors Gauvreau and Dagenais were involved in the near derailment of train no. 61 travelling from Montreal to Toronto on October 30, 2011. As their train was approaching the Danforth crossover, located between Guildwood and Toronto, they travelled westward at high speed, up to 87 mph.

The record confirms that the initial approach signal indicated “advance clear to limited”, and that the signal was properly called by both locomotive engineers. By the operation of CROR 412 that signal effectively directed the grievors to reduce to a speed not exceeding 45 mph as they approached the next signal. In fact no reduction occurred at that time.

The next signal, referred to as the intermediate signal, indicated “clear to limited” at a distance approximately one mile from the entrance to the crossover at Danforth.

The record confirms that Locomotive Engineer Dagenais called out that signal but that there was no repeat call made by the operating engineer, Mr. Gauvreau. It appears that on a second call by Mr. Dagenais Mr. Gauvreau did react and call the intermediate signal. Nevertheless, the train continued to travel at some 87 mph. It is only at or about the point of the crossover home signal, located at Mileage 328.9 of the Kingston Subdivision, which indicated "limited to limited" that Mr. Gauvreau finally commenced a brake application.

In what can only be described as a near disastrous incident, their train went through the 45 mph crossover at an actual speed of 74 mph. The train, which was carrying some 425 passengers and 8 on board employees in seven passenger cars reacted violently. It does not appear disputed that galley carts were ejected from their refrigerators and that baggage fell from the overhead containers. A report later completed by the train's service manager, Mr. Mark Joannette, relates: "As we went through there the train did a massive sway to the left and then to the right. ... I have to say that in 14 years, I have never swayed this much."

Having cleared the crossover intact, the grievors neither slowed nor stopped their train, continuing on at speeds varying from 74 to 77 mph. The grievors did not stop their train, they did not inspect their train or the crossover switch for possible damage and they did not advise the rail traffic controller of what had happened. It appears that Mr. Dagenais communicated with the on board service manager to determine whether there was any injury to passengers or damage to equipment. Being advised that there were

no injuries to the passengers Mr. Dagenais commented that he would be contacting the RTC to report the incident. In fact “the incident” was never reported.

The record discloses that upon arrival at Union Station in Toronto Mr. Dagenais and Mr. Gauvreau inspected their train and, additionally, they contacted the RTC by telephone to request that there be an inspection of the crossover at Danforth. While their precise communication to the RTC is not clear, it appears that they merely indicated to him that they had had a rough passage through the crossover switch, and not that in fact their train may have damaged it because of a close to 30 mph over-speed.

It was only by reason of the letter of a passenger that the Corporation learned of the near derailment. On October 31, 2011 the employer received a letter from a passenger. That passenger’s letter relates, in part:

Between Guildwood and Union Station the train went off the tracks (according to eyewitnesses, we actually went off the tracks and this is certainly how it felt), we wavered back and forth several times and it was clear that there was a very real chance the cars were going to totally derail and tip over. It felt like we were going very fast and I have to say I thought this was going end very badly. Dishes crashed, staff admitted to feeling like we were going to derail and everyone panicked.

Upon receipt of the passenger’s letter Manager, Train Operations Mark Lavallée made inquiries. On the day the letter was received he called Mr. Dagenais at home. He then asked him whether he and Mr. Gauvreau had taken a crossover between Guildwood and Toronto at excessive speed. Mr. Dagenais then denied having done so, although he confirmed that they had taken the Danforth crossover. Shortly after that

conversation Mr. Dagenais phoned Mr. Lavallée back and admitted there may have been some speed in excess of the 45 mph speed limit at the crossover, and that he should inquire further with Mr. Gauvreau who was the operating locomotive engineer. Mr. Lavallée then advised Mr. Dagenais that he would be verifying the locomotive download of train 61 to determine more precisely the speed at which it travelled through the crossover at Danforth. Mr. Lavallée's further inquiries resulted in Service Manager Joannette filing an incident report on November 9, 2011. He also obtained a report from an employee who was travelling as a passenger from Guildwood, Mr. José DaSilva. Mr. DaSilva's incident report essentially corroborates that of Mr. Joannette. Based on the passenger's letter and the incident reports in his possession by November 10, Mr. Lavallée met Mr. Gauvreau on that date as he reported for work. When he then asked Mr. Gauvreau whether his train had travelled through the Danforth crossover on October 30, 2011 at excessive speed Mr. Gauvreau acknowledged that it had done so, estimating the speed to be approximately 70 mph through the crossover.

Following a disciplinary investigation, both grievors were dismissed for an extensive number of rules' violations as well as for having attempted to conceal the incident of October 30, 2011 at the Danforth crossover.

The Union's representatives take issue with a number of the rules alleged by the Corporation to have been violated. I do not consider it necessary to consider all of the rules raised by the Corporation. However, CROR rule 101, entitled "Protection Against Extraordinary Conditions" reads, in part, as follows:

CROR rule 101 – Protection Against Extraordinary Conditions

- (a) A movement must be fully protected against any known or suspected condition that may interfere with its safe passage.
- (b) A movement must stop at once and be fully inspected when it is known or suspected to have struck any object that may interfere with its safe operation. The RTC must be notified as quickly as possible.

In the Union's submission there was no violation of rule 101, as there was no emergency brake application made by the crew and their train did not strike an object which might interfere with its safe operation. I cannot agree. The facts confirm that their train came into violent contact with the Danforth crossover switch, to the point of tipping the cars noticeably. To argue, as the Union does, that the rule was not violated unless an object, such as a dead animal, might have been struck, is in my view technical in the extreme. The substance of the rule is to require a train to be stopped "at once" and be inspected where the train's contact with "any object" could interfere with its safe operation. In my view that could include a faulty track or a switch.

The unchallenged fact that the grievors inspected the train thoroughly upon arrival at Union Station leaves little doubt in the Arbitrator's mind that they considered that the contact between their train at high speed and the Danforth crossover was such as to potentially interfere with the safe condition of their train. Their decision not to stop at the crossover switch, and to contact the RTC only considerably later by telephone, without in fact advising him of the details of the high speed crossover incident can only, in my view, be understood as part of an attempt to evade the application of rule 101 and to conceal what had occurred. Additionally, the Union admits that the grievors were in violation of rule 416 by reason of exceeding the maximum speed limit of 45 mph, as

directed by their signals, and in fact travelling through the Danforth crossover at 74 mph.

The seriousness of what occurred cannot be downplayed. A similar incident involving a VIA train in February of 2012 near Burlington, Ontario in fact resulted in a tragic derailment and three fatalities, as well as injuries to passengers.

In the Arbitrator's view a fundamental concern which arises from the facts is the deliberate concealment of the event by the grievors. As noted above, while the Union suggests that the grievors did in fact report the incident to a rail traffic controller, that is not the whole truth. In fact, when they telephoned the RTC from Union Station after completing their trip they simply indicated to him that there was reason to think that the crossover at Danforth should be inspected. They did not tell him that they had moved a seven car passenger train through the crossover as close to 30 mph in excess of the 45 mph speed limit. They in fact advised no-one of that fact. Further, when Mr. Dagenais was first telephoned by Mr. Lavallée he simply denied that they had exceeded the permissible speed at the crossover. Perhaps realizing that concealment would not succeed, given the Corporation's access to computer download information, Mr. Dagenais immediately called Mr. Lavallée back to say that he and Mr. Gauvreau "may" have exceeded the permissible speed, but that he should verify that with Mr. Gauvreau. When Mr. Gauvreau finally admitted to the over-speed when he was confronted on November 10, 2011 by Mr. Lavallée, it is not surprising that he then admitted the truth,

appreciating that any prior investigation by Mr. Lavallée would have revealed the truth as to the speed of his train at the Danforth crossover on October 30, 2011.

This is the second time Mr. Gauvreau has been found to be involved in a serious rule violation in which he effectively concealed the facts from his employer. **CROA 3320** involved an incident in which the grievor improperly operated train 31 between Montreal and Ottawa as a single locomotive engineer, without a workmate, when the other engineer was left behind inadvertently at the station of Alexandria. While that incident resulted in his discharge, this Office reinstated him, largely on the basis that the discipline issued against him was disproportionate as compared to the discipline which his workmate received, bearing in mind that his workmate was entirely complicit in the concealment of the incident.

In my view the incident here under review leaves little doubt but that the Corporation is correct in its conclusion that it cannot trust Mr. Gauvreau. It scarcely needs elaboration that a person responsible for the movement of passenger trains in a highly safety sensitive context must be trusted at all times to respect operating rules and to bring to the employer's attention any serious incident such as that which befell train 61 on October 30, 2011 at the Danforth crossover. The Corporation has concluded that it cannot trust Mr. Gauvreau and I am not prepared to second guess that conclusion, particularly as this is the second discharge event in his career involving a serious attempt to conceal a critical incident from his employer.

Regrettably, I am compelled to the same conclusion with respect to Mr. Dagenais. The evidence confirms that, like Mr. Gauvreau, he knowingly participated in not stopping their train immediately after the near derailment, not inspecting it or inspecting the crossover switch and, most critically, not reporting the full incident to the rail traffic controller or anyone else in responsible authority. I consider it significant that Mr. Dagenais had the opportunity to “come clean” when he was telephoned by Mr. Lavallée at his home on the day following the incident. In the initial conversation Mr. Dagenais said that they had not exceeded the speed limit at the crossover, shortly thereafter calling him back to say that they may have exceeded the speed limit “a little” (arbitrator’s translation). In my view that attempt at playing down what had in fact occurred was equally dishonest. Regrettably, I am compelled to the conclusion that Mr. Dagenais has irrevocably destroyed the bond of trust which is an essential part of the relationship between himself and his employer.

For the foregoing reasons the grievances must be dismissed.

April 16, 2012

(signed) MICHEL G. PICHER

ARBITRATOR