

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4105**

Heard in Montreal, Tuesday 8 May 2012

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Level of discipline assessed Locomotive Engineer D.J. Richard for violation of CROR 439 on October 31, 2010 at Deersdale, Napadogan Subdivision.

JOINT STATEMENT OF ISSUE:

On October 31, 2010, Mr. Richard was the locomotive engineer on Train L53511-31 and did not stop his train prior to passing a stop signal at Deersdale, located at Mile 115.3, Napadogan Subdivision.

The Company conducted an investigation of the incident and determined that the grievor had violated CROR Rule 439. The grievor was subsequently assessed a 90 day suspension for "Violation of CROR Rule 439 on Oct. 31, 2010 at Deersdale, Napadogan Sub."

The Union contends that the Company did not take into account favourable mitigating circumstances, particularly Mr. Richard's commendable discipline history and that the level of discipline assessed is unwarranted and excessive.

The Union requests that the discipline assessed be substantially reduced and that Mr. Richard be compensated for loss of wages and benefits accordingly.

The Company disagrees with the Union.

**FOR THE UNION:
(SGD.) R. LECLERC
GENERAL CHAIRMAN**

**FOR THE COMPANY:
(SGD.) JEFF LIEPELT
SENIOR VICE-PRESIDENT, EASTERN REGION**

There appeared on behalf of the Company:

D. Larouche	– Manager, Labour Relations, Montreal
D. Gagné	– Sr. Manager, Labour Relations, Montreal
D. VanCauwenbergh	– Director, Labour Relations, Toronto

There appeared on behalf of the Union:

J-M Hallé	– Sr. Vice-President, Quebec
R. Leclerc	– General Chairman, Grand-Mère

AWARD OF THE ARBITRATOR

It is not disputed that the grievor did violate CROR Rule 439 when he passed a stop signal at Deersdale on the Napadogan Subdivision in New Brunswick. He did so as his movement was leaving a siding, having switched out a lumber mill located off the siding at Mile 115. As the grievor's train, consisting of two locomotives and two cars, approached the main line switch Locomotive Engineer Richard became distracted, recording certain work events in his notebook. Doing so he failed to observe the stop indication being displayed by the signal at the mainline switch. At the last moment his conductor did see the red light and immediately told him to apply the emergency brake, which he did. In the result, his train moved past the stop signal by approximately a car length, a clear violation of CROR 439. The material before the Arbitrator also confirms that while the siding in question had a speed limit of ten miles per hour, a subsequent download of the locomotive's event record confirmed that the grievor's movement had in fact reached nineteen miles per hour as it approached the mainline switch.

Following a disciplinary investigation Mr. Richard was assessed a ninety day suspension.

The sole issue in this grievance is the appropriate measure of discipline. The Union stresses that the grievor has thirty-eight years of service, being fifty-nine years of age. In all of those years of service Mr. Richard has been disciplined only once, apparently in 1997 for a rule 104 violation. In the circumstances, its representatives submit that the assessment of a ninety day suspension is excessive and should be reduced. They note, for example, that in some cases previously heard in this Office the penalty for a violation of CROR 439 has been in the range of thirty to forty demerits, although the records also indicate that suspensions have been assessed in the past.

The Company's representatives stress that there were several errors committed by the grievor, including the fact that he did not pay attention while in command of his locomotive, that he did not call the signal as he approached it, that he exceeded the speed limit and, finally, that he passed through a stop signal contrary to Rule 439. The Company submits that these infractions, culminating in a cardinal rule violation, do merit the suspension assessed against Mr. Richard.

Is this a case for the mitigation of the penalty? I consider it important to stress that a violation of CROR 439 is among the most serious of cardinal rule violations. As is evident from prior awards in this Office, it has not infrequently resulted in discharge. In that context I accept the submission of the Company which explains that the decision to assess a suspension against the grievor, rather than an outright discharge for his several rule infractions, was in recognition of his prior good service.

Upon a careful examination of the facts, I am compelled to the conclusion that the mitigating factor of the grievor's prior record is, regrettably, counterbalanced by a number of aggravating factors. As noted by the Company, Locomotive Engineer Richard in fact violated several rules, ultimately causing him to pass through the stop signal before bringing his train to a stop by an emergency brake application. He became distracted by paperwork and took his eyes off the road ahead as his train progressed over the siding towards the main line switch. Knowing, by reason of his location, that he was approaching the main line switch signal, he made no effort to call that signal to his conductor. Perhaps most seriously, he allowed his movement to proceed at close to twice the permissible speed, a factor which no doubt contributed to his eventual inability to stop it short of the stop signal. Given these aggravating factors, and the fact that suspensions of ninety days are not uncommon, and have been sustained by this Office, for similar infractions, I do not consider that this is an appropriate case for a substitution of penalty.

For all of the foregoing reasons the grievance must be dismissed.

May 14, 2012

(signed) MICHEL G. PICHER
ARBITRATOR