

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

CASE NO. 4124

Heard in Montreal, Wednesday 11 July 2012

Concerning

VIA RAIL CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The dismissal of Locomotive Engineers D. Beaulieu and G. Scott.

JOINT STATEMENT OF ISSUE:

On February 4th, 2012 Locomotive Engineers D. Beaulieu and G. Scott were operating VIA train no. 62 between Toronto and Montreal when they went through a 45 mile per hour (mph) cross-over at 62 mph.

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

The Union requests that the discipline be removed and the Messrs. Beaulieu and Scott 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. Beaulieu and Scott committed serious rule and safety violations by going through a 45 mph crossover at excessive speed. The Corporation discovered the incident by chance when following up on the delay incurred by train no. 62 on February 4, 2012. The Corporation submits that Messrs. Beaulieu and Scott deliberately concealed the true reason for stopping train no. 62 in emergency and did not properly report the incident to the authorities as required. As such the bond of trust between employer and employee has been breached and it cannot be restored. Under the circumstances, the dismissal of Messrs. Beaulieu and Scott is warranted and appropriate.

**FOR THE UNION:
(SGD.) WM. MICHAEL
GENERAL CHAIRMAN**

**FOR THE COMPANY:
(SGD.) D. STROKA
SR. ADVISOR, LABOUR RELATIONS**

There appeared on behalf of the Corporation:

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| D. Stroka | – Sr. Advisor, Labour Relations, Montreal |
| G-A Dufresne | – Manager, Train Operations, Montreal |
| L. Larose | – Manager, Train Operations, Montreal |
| G. Sarazin | – Sr. Advisor, Labour Relations, Montreal |

There appeared on behalf of the Union:

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|--------------|--------------------------------------|
| P. Boucher | – Arbitration Representative, Ottawa |
| Wm. Michael | – General Chairman, Kitchener |
| N. Moreau | – Local President, Montreal |
| S. Mitchell | – Local Chairman, Montreal |
| D. Arseneau | – Secretary/Treasurer, Montreal |
| P. Robillard | – Locomotive Engineer, Montreal |
| R. Brault | – Locomotive Engineer, Montreal |
| D. Beaulieu | – Grievor |
| G. Scott | – Grievor |

AWARD OF THE ARBITRATOR

The grievors were discharged for allegedly attempting to conceal an important rule violation and a potentially hazardous incident.

On February 4, 2012, the grievors Beaulieu and Scott operated train 62 from Toronto to Montreal. Mr. Beaulieu worked as the In-Charge Engineer while Mr. Scott was the Operating Locomotive Engineer.

At Mileage 211.6 the grievors encountered an advance signal to the track crossover at Marysville. That signal then indicated “clear to limited”. That effectively instructed them to reduce their speed to 45 miles per hour (mph). In fact they did not do so and continued towards the crossover at 89 mph.

The next signal encountered, at Mileage 209.13, the entrance to the crossover at Marysville, displayed a “limited to clear”. That meant that their movement was to move

through the crossover at a limited speed of 45 mph. It appears that the grievors realized their error, and the excessive speed of their train some fifteen seconds prior to entering the crossover. It is at or about that point in time that Locomotive Engineer Scott began to make a number of brake manipulations, finally engaging the train's emergency brakes. Download evidence from the locomotive confirms that their train then skid through the crossover in the emergency brake application, at 62 mph.

The grievors stopped their train after going through the crossover. As required by the rules, Locomotive Engineer Beaulieu made an emergency radio call, advising the rail traffic controller (RTC) that they had placed their train into emergency. When asked by the RTC what had happened Mr. Beaulieu responded that they had placed their train into emergency braking "by accident". They did nothing further to report the incident. At most, their train summary trip report, submitted to VIA's Operation Control Centre contained a notation that they had encountered a five minute delay for train inspection at Mileage 208.

It is only because the Operation Controller questioned the reason for the five minute delay that any further enquiry was done by the Corporation. Having spoken to the RTC, Operation Controller Nicholas Achillas spoke with Mr. Beaulieu. The grievor then confirmed to him that train no. 62 had stopped in emergency, explaining that in fact the braking distance to the crossover was insufficient and that the emergency brake was applied for safety reasons. Mr. Beaulieu gave the impression that he believed that the train had in fact gone through the crossover at the permissible speed.

At the conclusion of Mr. Scott's rest days, on February 10, 2012 he was met by Manager, Train Operations Guy-André Dufresne. When asked why the emergency brakes had been applied on train no. 62 on February 4, 2012 Grievor Scott replied that as he approached Marysville he noticed that the brakes did not grip the rails properly. He went on to say that the emergency brakes were applied to ensure a safe passage through the crossover. According to Mr. Scott's estimate during that conversation he believed that the movement went through the crossover at a speed of 48 to 50 mph.

Subsequently, in the completion of an Incident Report on February 14, 2012 Mr. Scott elaborated, adding that he had been subject to a momentary distraction due to the temperature in the cab. Subsequently, during the disciplinary investigation conducted by the Corporation, Locomotive Engineer Beaulieu also indicated that he had been distracted as their train approached Marysville. He related that he had previous involvement in a fatal accident at Mile 217 and that he finds it difficult to go through that area where, apparently, a wreath still marks the spot where the fatality occurred.

Following the disciplinary investigation the Corporation discharged both grievors for a number of rule violations, including their failure to fully report the incident and what the Corporation viewed as their deliberate attempt to conceal it.

In my view there is no issue but that the grievors did fail to fully disclose what had occurred, contrary to their obligation. They clearly rendered themselves liable to a

serious degree of discipline in the circumstances. However, there are mitigating factors which I believe must be closely examined in this case. Firstly, both employees have thirty-two years' service and had clear disciplinary records at the time of the incident, as well as relatively good discipline records over the entire period of their service. Secondly, and in my view critically, the grievors expressed the view that they believed that the emergency brake application while approaching the crossover at Marysville may well have slowed their movement to or close to the permissible speed of 45 mph as their train moved through the crossover. While their claim may be doubted, they did not know to a certainty that they had violated the reduced speed requirement for the crossover, although there could be little doubt but that they knew that they had violated the clear to limited direction of the advance signal at Mileage 211.6.

When close regard is had to the statements which both Mr. Beaulieu and Mr. Scott provided to representatives of the Corporation in the hours and days following the incident, it is fair to say that their reports are better characterized as attempts to play down what had occurred rather than the fashioning of outright falsehoods. The fact that Mr. Beaulieu first reported what had occurred as an "accident" is, however, consistent with an attempt to conceal what had transpired. I am satisfied that both he and Mr. Scott, obviously panicked by what had occurred, were less than candid and forthcoming with the RTC upon the moment of what was obviously a harrowing incident. However they state that they believed that in fact their train had moved through the crossover at or close to the permissible speed, and were not in fact aware that it was moving at 62 mph when it moved from one track to another through the crossover at Marysville.

Given that perspective, and the speed at which the incident occurred, it is at least arguable that they did not feel that they had committed a rule infraction which was their obligation to report, as relates to the movement of their train through the crossover. Additionally and significantly, I am satisfied that as the Corporation's investigation proceeded, they gave a full and accurate account of what occurred.

In my view this is not a case which confirms that the Corporation can no longer consider the bond of trust to exist between itself and these two employees. As noted above, they are long service employees with good disciplinary records. As the incident occurred, they did not realize that their train went through the crossover at an excessive speed, a fact which became known by a subsequent review of the download of the locomotive's recording computer. While it is true that they downplayed what had happened, given the extent of their precise knowledge, I am not persuaded that what occurred was a wholesale attempt to mislead their employer.

In the circumstances I am satisfied that this is an appropriate case for their reinstatement, albeit without compensation. The grievances are therefore allowed in part. The Arbitrator directs that the grievor's be reinstated into their employment forthwith, without loss of seniority and without compensation for any wages or benefits lost.

July 26, 2012

(signed) MICHEL G. PICHER
ARBITRATOR

