

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

**CASE NO. 4140**

Heard in Montreal, Thursday, 13 September 2012

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal the assessment of a 90 day suspension to Locomotive Engineer J. Diotte for “your failure to comply with CROR Rules 411 and 439, and subsequent violation of CROR Rule 403.1 on the Ashcroft Subdivision at Mile Point 101.5 on December 10, 2011 on Train A41141 08”.

**JOINT STATEMENT OF ISSUE:**

On December 10, 2011, Mr. Diotte was assigned to train A41141 08 when they were approaching Cisco West with the conductor operating the train. Part way through Cisco, Mr. Diotte noticed that the conductor was not slowing the train and Mr. Diotte ordered the conductor to place the train into emergency. Despite being in emergency, the train went past the stop signal at Cisco West by approximately 2-1/2 car lengths with no damage being done and no conflicting movements approaching. Subsequent to an investigation Mr. Diotte was served with a suspension.

The Union contends that the Company did not take into account the mitigating circumstances surrounding the incident and that the discipline is excessive.

The Union requested the Company reconsider the discipline assessed and expunge the discipline or, in the alternative, reduce the discipline and compensate Mr. Diotte for all loss of wages and benefits.

The Company disagrees with the Union.

**FOR THE UNION:**  
**(SGD.) T. MARKEWICH**  
**FOR: GENERAL CHAIRMAN**

**FOR THE COMPANY:**  
**(SGD.) D. CROSSAN**  
**MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

K. Morris  
T. Brown

– Sr. Manager, Labour Relations, Edmonton  
– General Manager Operations, Champlain

D. Larouche	– Manager, Labour Relations, Montreal
F. Montambeault	– Human Resources Advisor, Montreal
K. Rehel	– Human Resources Advisor, Montreal
T. Truong	– Labour Relations Intern, Montreal

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Toronto
B. Willows	– General Chairman, Edmonton

### **AWARD OF THE ARBITRATOR**

Having reviewed the material the Arbitrator can appreciate the Union's position. It submits that a three month suspension was excessive, given the grievor's length of service and prior disciplinary record, which it submits is that of a good employee. The Arbitrator accepts that the grievor has been a good employee. That, however, does not fully cover all of the factors in the instant case.

As stressed by the Company's representatives, there were a number of rules infractions committed by the grievor and his conductor in relation to their violation of rule 439 at Mile 101.5 of the Ashcroft Subdivision on December 10, 2011. Notably, the speed of their movement was in violation of the restriction for the territory over which they were travelling. It does not appear disputed that the grievor did not communicate to Conductor Town the need to reduce his speed at Mile 101.4. Additionally, it appears that there was a six second delay between the time the grievor himself reacted to the situation and the point at which his conductor placed the train into emergency. That could have been avoided, as the grievor could himself have placed the train in emergency, without relying on Mr. Town, who was a conductor / locomotive operator.

There is another element, stressed by the Company, which I also view as an aggravating factor. The grievor knew, or reasonably should have known, that his movement was travelling at a relatively short distance behind another train. As it happens, when the rule 439 infraction occurred, the tail end of the other train was in fact visible at some distance. It is not excessive to say that in these circumstances a collision was narrowly averted. Finally, the record confirms that while the grievor apparently instructed Conductor Town to make a radio broadcast, no such emergency broadcast was in fact made, in further violation of the rules, in particular rule CROR 403.1(ii).

While it is true, as pointed out by the Union, that some prior awards of this Office have seen lesser measures of discipline for violation of Rule 439, it must be stressed, however, that each case depends on its particular facts. For example, in **CROA 3865** a CROR 439 infraction was committed by an employee of twenty-five years' service who had never previously received any discipline whatsoever. In my view those cases are distinguishable.

For all of the foregoing reasons the Arbitrator is satisfied that the assessment of a 90 day suspension was not inappropriate in the circumstances, and that the Company's decision should not be disturbed. The grievance is therefore dismissed.

September 18, 2012

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MICHEL G. PICHER  
ARBITRATOR