

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION  
CASE NO. 4165**

Heard in Montreal, Wednesday 12 December 2012

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal the assessment of 20 demerit marks assessed to Locomotive Engineer A. Boutsakis of Vancouver for “failure to comply with CROR 44 while operating on the New Westminster Subdivision during your tour of duty as the locomotive engineer on the YCXS01, 1200 Lynn Creek transfer on August 31, 2012”, and his resulting discharge for the accumulation of demerit marks in excess of sixty, effective September 17, 2012.

**JOINT STATEMENT OF ISSUE:**

On August 13, 2012, Locomotive Engineer Boutsakis was assigned as the locomotive engineer on the 1200 Lynn Creek transfer, YCXS01 when he encountered a yellow flag at mile 145.2 on the New Westminster Subdivision and failed to contact the RTC in accordance with CROR 44.

The Company conducted an investigation of the incident and determined that Locomotive Engineer Boutsakis had violated CROR Rule 44 and was assessed discipline which resulted in his discharge due to an accumulation of demerit marks in excess of sixty.

The Union contends that the discipline was unwarranted under the circumstances that the Company did not take into account all of the mitigating factors: specifically that Locomotive Engineer Boutsakis was not provided with a reasonable opportunity to pass the efficiency test. The Union further contends that Locomotive Engineer Boutsakis' statement clearly revealed mitigating factors that defined the efficiency test failure as falling into the minor offence category as contemplated under Article 86.9 of Addendum 122 of Agreement 1.2.

The Union requested that the Company expunge the discipline assessed and that Locomotive Engineer Boutsakis be made whole for all lost wages and benefits.

The Company disagrees with the Union's contentions.

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

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

There appeared on behalf of the Company:

D. Crossan	– Manager, Labour Relations, PG
P. Payne	– Manager, Labour Relations, Edmonton
M. Merson	– Assistant Superintendent, BC South
D. VanCauwenbergh	– Director, Labour Relations

There appeared on behalf of the Union:

D. Ellickson	– Counsel
B. Willows	– General Chairperson TCRC
A. Boutsakis	– Grievor

### **AWARD OF THE ARBITRATOR**

The material before the Arbitrator confirms that the grievor has, at least in recent years, been involved in a number of serious rules infractions. As is evident from the facts of the instant case, however, the matter which resulted in his termination was in fact a relatively minor offense. It does not appear disputed that in relatively busy territory the grievor encountered a yellow flag which had been placed there as part of an efficiency test. Although he was travelling at a speed which would have been permissible under that flag, at less than 10/mph, Mr. Boutsakis did not comply with CROR 44 in that he failed to contact the rail traffic controller to inquire as to the reason for the placement of the yellow flag. In mitigation, however, it does appear that his train was in any event scheduled to make a stop a relatively short distance beyond the flag.

I must agree with the Company that the grievor violated the rules and that his record is not exemplary. However, given his twenty-two years of service, I am satisfied that this an appropriate case for a reduction of penalty. The grievance is therefore allowed in part. The Arbitrator directs that the grievor be reinstated into his employment

forthwith, without compensation for wages and benefits lost and without loss of seniority. His time out of service shall be recorded as a suspension.

December 17, 2012

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