

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4172

Heard in Montreal January 10, 2013

Concerning

VIA RAIL CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal the assessment to Locomotive Engineer R. Whalen of Winnipeg, MB of 30 demerits resulting in a discharge for the reason "for failure to comply with CROR 115, 113, 35 and G.O.I. Section 3, Item 3.5 resulting in high impact collision with Train No. 1 on August 9, 2012 and subsequent damage to VIA Rail equipment and 34 reported injuries to passengers and staff.

JOINT STATEMENT OF ISSUE:

On August 9, 2012 Mr. Whalen was coupling cars on Train No. 1 at the Winnipeg station. This movement, in excess of the permissible speed, resulted in a high impact collision. The Union contends that the discipline assessed to Mr. Whalen is unwarranted and excessive under the circumstances. The Corporation did not take into account the mitigating circumstances. The Union requests that the discipline be removed from Mr. Whalen's disciplinary record and that Mr. Whalen be reinstated without loss of seniority and that he be made whole for all lost wages and benefits.

The Corporation submits that Mr. Whalen's actions while coupling cars to Train No. 1 on August 9, 2012 resulted in injuries to VIA passengers and on board staff. Under the circumstances, the discipline assessed to Mr. Whalen is warranted and appropriate.

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

FOR THE CORPORATION:
(SGD.) D. STROKA,
SENIOR ADVISOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

D. Stroka	– Senior Advisor, Labour Relations, Montreal
K. Howard	– Supervisor, E.M., Winnipeg
M. McAmmond	– Senior Manager Operations West,
G. Sarazin	– Senior Advisor Labour Relations, Montreal

There appeared on behalf of the Union:

M. Church	– Counsel, Toronto
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B. Willows	– General Chairman, Edmonton
C. F. Field	– Local Chairman, Winnipeg
R. Whalen	– Grievor

AWARD OF THE ARBITRATOR

On August 9, 2012 Locomotive Engineer Whalen was the in-charge locomotive engineer on train number 1 scheduled to operate from Winnipeg to Melville. The train, which had previously arrived from Toronto, had been separated within the Winnipeg station. Eighteen cars, which were occupied by passengers, were left on the main track during a four hour layover. By reason of space, it was necessary to transfer a segment of six cars and their passengers to an adjacent track. As their departure time approached, the two locomotive engineers were required to recouple the two train segments.

Mr. Whalen and his operating engineer, Mr. Roy Hall, were therefore required to remove the segment of six cars from track number four and reverse those cars back into track number six where the main body of the train had been left. They were to recouple the two consists of cars in preparation for departure.

For the purposes of the reverse movement Locomotive Engineer Whalen detrained and, from a position on the ground where he could observe the movement, gave verbal instructions by radio to Locomotive Engineer Hall with respect to the backing and coupling of the train. His obligations in that regard were in conformity with CROR Rule 115 which provides as follows:

When equipment is shoved by an engine or is headed by an unmanned remotely controlled engine, a crew member must be on the leading piece of equipment or on the ground, in a position to observe the track to be used and to give signals or instructions necessary to control the move.

The verbal radio instructions which were to be provided by Mr. Whalen to Mr. Hall are covered by CROR Rule 123.2 which governs switching by radio and provides as follows:

When radio is used to control switching, and after positive identification has been established, the following procedures are required:

- (a) Direction in relation to the front of the controlling locomotive must be given in the initial instruction and from then on whenever the direction is to change
- (b) Distance to travel must be given with each communication;

Note: Increments of less than two car lengths not be repeated [...]

It is common ground that the car lengths of passenger cars are seventy-five feet, being longer than is the case for freight cars. As they backed their movement Mr. Whalen and Mr. Hall governed themselves in accordance with the length of passenger cars in dealing with the increments of car lengths separating the two consists. As required by G.O.I. Section 3, item 3.5, when coupling equipment which is occupied by passengers it is necessary first to stop the two consists at a distance of between six and twelve feet before the actual coupling is undertaken, and to couple at a speed not in excess of one mile per hour. Unfortunately that did not occur in the case at hand.

I am satisfied, based on the evidence of Mr. Whalen and the corroboration of Mr. Hall, that Locomotive Engineer Whalen did provide verbal radio signals to Mr. Hall by communicating eight cars to stop, six cars to stop, five cars to stop and three cars to stop. Those commands were in fact repeated by Mr. Hall. However, as the six car

consist being backed by Mr. Hall reached the three car distance, it became apparent to Mr. Whalen that the movement was proceeding too quickly. He then communicated "That will do !" to Mr. Hall which, it does not appear disputed, is a clear command to stop. Mr. Hall did not repeat that direction and, it appears, continued to move towards the coupling point at an excessive rate of speed, said to be approximately eight miles per hour. Seeing no response Mr. Whalen again called out stop, but it was obviously too late, as the lead consist backed in to the eighteen car consist causing a substantial shock to the passengers and employees aboard both segments of the train, which had 347 passengers and 31 employees on board. Sixteen employees and eighteen passengers suffered injuries. One of them, an employee, had to be taken to hospital by ambulance and still suffers from injuries which have prevented that employee's ability to return to work. Fortunately the injuries to passengers were relatively minor and were generally dealt with by paramedics who immediately attended the location of the incident.

The Corporation assessed 30 demerits against Mr. Whalen for what it judged to be his negligence in overseeing the backing of the front end consist of the train by Mr. Hall. In the Corporation's view, Mr. Whalen was in a position to see that the backing movement was proceeding at an excessive rate of speed so that a rough coupling or worse, could not be avoided. The Corporation's representative submits that it was incumbent upon Mr. Whalen to clearly advise the operating Locomotive Engineer, Mr. Hall, that he was moving too quickly and must take immediate steps to slow his movement as it approached the eighteen car consist sitting in track number six. She

notes that in fact, by the grievor's own admission, he believed that the coupling was proceeding in a normal and safe manner, and that when he advised Locomotive Engineer Hall to stop his movement there would be no difficulty in doing so.

In fact Locomotive Engineer Hall did not take the proper steps to insure that he could stop his consist of six passenger cars when immediately told to do so. The normal practise would have been for Mr. Hall to set the brake on his consist as he backed it towards the coupling point, so that a mere release of the throttle would have resulted in an automatic stopping. In fact Mr. Hall did not set the brake, and he was compelled to attempt to do so only when his consist was some three car lengths away from the coupling point. As it was then moving at approximately eight miles per hour it became impossible for him to in fact stop the reverse movement of his consist of two locomotives and six passenger cars. It is common ground that at the speed and distances involved, the independent locomotive brakes would have been unable to stop the movement in time. The fact that the train's air brakes had not been set was in fact fatal to any ability of the train to stop on Mr. Whalen's command.

Counsel for the Union stresses that Mr. Whalen had no reason to know that Mr. Hall had departed from normal practise and had not in fact set the brake prior to commencing his reverse movement. To all appearances, in counsel's view, Mr. Whalen had no reason to think that what was transpiring was anything but a normal reverse movement for coupling and had no basis to believe that there was any danger in the

scenario which was unfolding. On that basis he maintains that the Corporation had no grounds to assess any discipline against Mr. Whalen.

After careful consideration of the facts, I have some difficulty with the Union's submission, albeit I believe that the grievor's termination as a consequence of what occurred bears reconsideration. Firstly, it does not appear disputed that the speed at which the reverse movement was being operated by Mr. Hall was excessive. I do not consider that Mr. Whalen exercised sufficient caution in observing the speed at which the forward consist of cars under Mr. Hall's control was approaching the coupling point. The record would indicate that he made no communication to Mr. Hall to suggest that he was moving at too fast a pace. While, to some degree, that might be understandable based on the assumption that Mr. Hall would have set the brakes on his train and could in any event effect a safe stop, I am compelled to agree that there was some error of judgement on Mr. Whalen's part in not communicating to Mr. Hall that his movement was moving too quickly. In fact, when the movement was at a six car distance from the coupling point it was travelling at six miles per hour and it accelerated to a higher speed of eight miles per hour by time it reached the three car separation point. After Mr. Hall attempted a first brake application his movement slowed to six miles per hour at the point of impact. I am compelled to agree with the Corporation that in these circumstances there was opportunity for Mr. Whalen to observe what was in fact an acceleration in the speed of the reverse movement, something which he should have communicated to Mr. Hall.

The issue in this grievance is the appropriate measure of discipline. I am compelled to agree with the Union that the termination of Mr. Whalen for what transpired is to some degree excessive. The mitigating factor of his not being aware of Mr. Hall not having set the brake is not inconsiderable, as Mr. Whalen could only operate on the basis of what he observed. In my view there was in fact an error of judgement both on the part of Mr. Whalen in not exercising sufficient caution in warning Mr. Hall about the speed of his movement, and some error of judgement on the part of the Corporation in attributing close to equal responsibility for the incident to Mr. Whalen, as compared with Mr. Hall.

In the result, the grievance is allowed, in part. I direct that the grievor be reinstated into his employment forthwith, without loss of seniority and with compensation to be paid for one half his wages and benefits lost. The 30 demerits shall be removed from his record and half the period between his termination and his reinstatement shall be recorded as a suspension.

January 14, 2013

(signed) MICHEL G. PICHER

ARBITRATOR