

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4173**

Heard in Montreal, January 10, 2013

Concerning

VIA RAIL CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal the assessment to Locomotive Engineer R. Hall of Winnipeg, MB, of a 14 day suspension and 30 demerits for the reason "for failure to comply with CROR 113, CROR 123.2(iii) and G.O.I. Section 3, Item 3.5 resulting in high impact collision with Train #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. Hall was coupling cars on Train No. 1 at the Winnipeg station. This movement, in excess of the permissible spend, results in a high impact collision. The Union contends that the discipline assessed to Mr. Hall is unwarranted and excessive in all circumstances. The Corporation did not take into account all the mitigating circumstances. The Union requests that the discipline be removed from Mr. Hall's disciplinary record and that Mr. Hall be made whole all lost wages and benefits.

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

AWARD OF THE ARBITRATOR

Mr. Hall was the operating engineer of VIA train number one which was in the Winnipeg station on August 9, 2012. In fact the train had been separated into two segments of cars which needed to be reassembled prior to departure after a four hour layover at Winnipeg. To effect the movement Mr. Hall operated two locomotives and six cars, moving them forward from track four and then, under the radio direction of locomotive Engineer R. Whalen, back into track six, where the six cars were to be coupled to eighteen additional cars already on that track. Both segments of cars were fully occupied by a combined total of some 349 passengers and some thirty one employees.

The record confirms that Mr. Hall did hear the directions of locomotive engineer Whalen by radio, and in fact repeated them, as he backed his movement towards the point of coupling. However, as confirmed by the train's download, he did not make a brake application on the movement comprised of two locomotives and six passenger cars, a movement which would bear considerable weight. In fact, as he moved backwards at speeds between ten and eight miles per hour, he did not attempt a brake application until his consist was some three cars away from the point of coupling. In the result, he was unable to affect a stop when Mr. Whalen called for him to do so. There resulted a firm collision between the two consists of passenger cars with very unfortunate results. It is not disputed that the crash caused passengers and employees

to be thrown out of their seats and beds and to be hurled against walls, furniture and other equipment within the body of the train. Eighteen passengers suffered minor injuries, generally sprains and bruising, while sixteen employees were injured. Unfortunately one of them needed to be taken to hospital by ambulance and has not yet returned to work by reason of the injuries sustained.

Following an investigation, the Company assessed 30 demerits and a two week suspension against locomotive engineer Hall. The Union submits that the coupling of demerits and a suspension in this circumstance constitutes double jeopardy and an inappropriate doubling of penalties for a single infraction. It may be noted that the penalty assessed against Mr. Hall is greater than that received by locomotive engineer Whalen, who was assessed 30 demerits, albeit that assessment resulted in his termination for the accumulation of demerits.

This Office has recognized that it may not be appropriate, depending on the circumstances, to assess two separate penalties against an individual for what is in effect a single infraction (**CROA&DR 2700**). Conversely, this Office has affirmed the ability of an employer to assess a penalty which is comprised of more than one element, as for example the awarding of demerits along with a suspension. It is trite to say, but each case must depend on its own given facts.

In the instant case, by the Union's own acknowledgement, locomotive engineer Hall was more responsible than locomotive engineer Whalen for the collision which

occurred between the two consists of passenger cars. His failure to set the brakes of his train prior to the coupling movement was in effect the active cause of the collision, as his train could simply not stop within the distances involved, given the speed at which it was moving. Indeed, Mr. Hall appears to have acknowledged his own error in that regard.

In my view it was not inappropriate to assess 30 demerits for what occurred, nor was it inappropriate, in an incident which involved numerous injuries to passengers and employees, one of which appears to have been serious, to assess the additional sanction of a two week suspension. As it happens, given the grievor's good prior disciplinary record, these events did not result in his termination, and he continues in active service. In my view there was nothing excessive in the discipline assessed by the Corporation and this is not a case which should be seen as justifying a reduction in penalty.

For all of the foregoing reasons the grievance is dismissed.

January 14, 2013

(signed) MICHEL G. PICHER
ARBITRATOR