

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4182**

Heard in Montreal, February 13, 2013

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the assessment of a 90-day suspension to Locomotive Engineer W.H. McLaughlin for his "Violation of CRO Rule 439 at Mile 17.8 Albreda Sub, Signal 176S at Yellowhead, during your assignment as Locomotive Engineer on M30251 28 July 28, 2012.

JOINT STATEMENT OF ISSUE:

On July 28, 2012, Mr. McLaughlin was assigned as the Locomotive Engineer on train M30251 28, when it failed to stop prior to passing Signal 176S on the Albreda Subdivision, indicating "Stop", without proper authority. The Company conducted an Investigation of the incident and determined that Locomotive Engineer McLaughlin had violated CROR Rule 439 and subsequently assessed his a 90-day suspension. The Union contends that the suspension was extremely excessive under the circumstances, and requested that the discipline be mitigated to a much lesser degree, and the Locomotive Engineer McLaughlin be made whole for lost wages and benefits. The Union also contended that there were alleged procedural flaws which, in the Union's view resulted in the investigation not being conducted in a fair or impartial manner. The Company disagrees with the Union's contentions.

FOR THE UNION:
(SGD.) B. Willows
General Chairperson

FOR THE COMPANY:
(SGD.) Kim Madigan
VP Human Resources

There appeared on behalf of the Company:

P. Payne	– Manager Labour Relations, Edmonton
K. Morris	– Senior Manager Labour Relations, Edmonton
D. Vancauwenbergh	– Director Labour Relations, Toronto
T. Brown	– General Manager, Montreal

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
B. Ermet	– Senior Vice General Chairman, Edmonton
B. Willows	– General Chairman, Edmonton

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the Grievor was in fact responsible for violating CROR 439 on July 29, 2012. It does not appear disputed that during the course of the grievor's tour of duty he and his workmate experienced a near miss in which they came close to colliding with some all-terrain vehicles trespassing on the road bed in remote territory. It appears that sometime later they both engaged in conversation about the incident in an attempt to clarify for themselves a description of the trespassers for the purposes of any subsequent report or investigation. While they were engaged in that discussion the grievor became somewhat distracted by it, as a result of which he forgot to pay attention to upcoming signal 176S at Yellowhead which had a stop indication. Upon seeing the stop signal he placed his train into emergency braking. However, it travelled a further 809 feet from that point, passing the stop signal by some 60 feet. Following an investigation the grievor was assessed a 90 day suspension.

The Union alleges, as a preliminary matter, that the Company failed to conduct a fair and impartial investigation. It bases that allegation on the fact that the investigating officer had a prior role in assembling certain facts and data in relation to the incident. With respect, I cannot share the Union's characterization of the investigating officer as a "witness" with respect to the incident being examined. While it is true that he may have had certain documentary material in his possession, that involvement does not, in my view, taint the ability of the investigating officer, or the investigation itself, with respect to

meeting the standard of a fair and impartial investigation. The Union's preliminary objection must therefore be dismissed.

The Union next alleges that the 90 day suspension assessed against the grievor was excessive in light of the length and quality of his service to the Company. It notes a number of other CROR 439 violations which have attracted the assessment of demerits, without any suspension, stressing that a 90 day suspension is of considerable consequence to the grievor for the purposes the eventual calculation of his pension entitlement, considering that he is 54 years of age and has been in service since 1979. Reference is further made to cases in which this Office has reduced 90 day suspensions for similar infractions: CROA 2356, 2625, 3298.

I must agree with the Union that there are substantial mitigating factors to be taken into account in this case. While there is no denying that the grievor was negligent and inattentive, his thirty three years of service to the Company reflect a remarkably exemplary disciplinary record. In those years of service Mr. McLaughlin has been disciplined on only three prior occasions resulting in assessments of ten demerits on two occasions, and twenty demerits on a further single occasion, the last being 2007. It appears that he has never been found at fault on any of many efficiency tests which were performed in observation of his work.

While the Arbitrator does not dispute that in appropriate cases a 90 day suspension may well be the justified result for a violation of CROR 439, I am satisfied

that is not so with the instant case, given the extraordinary record of locomotive engineer McLaughlin. In my view a suspension of thirty days would have been ample to bring home to Mr. McLaughlin the importance of maintaining attention at all times in the operation of his movement.

The grievance is therefore allowed, in part. The Arbitrator directs that the 90 day suspension be stricken from the grievor's record, with a 30 day suspension to be substituted and the grievor to be compensated for wages and benefits lost, accordingly.

February 18, 2013

MICHEL G. PICHER
ARBITRATOR