

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4188

Heard in Calgary March 13, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the assessment of 40 demerits and discharge to Locomotive Engineer Steve Munro.

Ex PARTE STATEMENT OF ISSUE OF THE UNION:

On May 14, 2012, Locomotive Engineer Steve Munro was assessed 40 demerits "For failing to ensure that your train was operated in a safe and effective manner, proceeding through a 10mph slow order at 39.6 mph and for failing to properly communicate the restrictions contained in the GBO in sufficient time to ensure compliance. Resulting in a violation of CROR General Rule(s) A (i), (III), (vi), and CROR Form V (1), as well as Rule(s) 106, 315(a), 142(b), 43(a), 44(d), 33, Event Based CRV Safety Rule Book for Field Operations page 52, and Saskatchewan Operating Bulletin SSA-030-12 while working as Locomotive Engineer on train 675-096 on Sutherland Subdivision on April 13, 2012." He was subsequently dismissed for accumulation of demerits.

The Union contends that Locomotive Engineer Munro's dismissal is unjustified, unwarranted and excessive in all of the circumstances.

The Unions requests that the discipline be removed and that Locomotive Engineer Munro be ordered reinstated forthwith without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

FOR THE UNION:
(SGD.) D. Able
General Chairperson

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

A. Becker	– Labour Relations Officer, Calgary
M. Thompson	– Manager Labour Relations, Calgary
M. Chernenkoff	– Labour Relations Officer, Calgary

There appeared on behalf of the Union:

D. Elickson	– Counsel, Toronto
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G. Edwards	– Vice General Chair, Revelstoke
D. Able	– General Chair, Calgary
P. Giesbrecht	– Local Chair, Saskatoon
S. Munro	– Grievor, Saskatoon

AWARD OF THE ARBITRATOR

It is not disputed that the grievor operated his train at a speed substantially in excess of the 10 mph slow order which was in effect on a section of the Sutherland subdivision on April 13, 2012 by reason of a damaged switch. It is common ground that the GBO in the possession of Mr. Munro and his conductor clearly established that they must slow their speed over the area in question. However, they proceeded at some 39.6 mph through the damaged switch located at Viscount, almost four times the 10 mph slow limit.

While the Union does not dispute that the grievor, an employee of 28 years' service, has received discipline in the past, it stresses that the instant case involves the first time Mr. Munro was disciplined for either a speeding infraction or the violation of any cardinal safety rule. A detailed review of the grievor's record would appear to confirm that claim. Over the years Mr. Munro has registered chronic problems with absenteeism which, it appears, constitutes the bulk of his prior discipline, albeit on a number of occasions in his career he has been disciplined for violations of CROR 104 and other switch related rule violations.

On balance, having considered the entirety of the evidence and the grievor's prior record, I am satisfied that this is an appropriate case for a reduction of penalty

and the reinstatement of the grievor, subject to the substitution of a penalty that is sufficiently serious to bring home to Mr. Munro the importance of paying close attention to his GBO and speed restrictions.

The grievance is therefore allowed, in part. The Arbitrator directs that Mr. Munro be reinstated into his employment forthwith, without compensation for any wages or benefits lost. The 40 demerits assessed against him shall be removed from his record and the period between his termination and reinstatement shall be recorded as a suspension.

March 18, 2013

MICHEL G. PICHER
ARBITRATOR