

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4203**

Heard in Montreal, May 14, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the assessment of a 90-day suspension to Conductor Nykolaychuk for his "Failure to comply with CROR 439 while working assignment G806651-06 as Conductor on August 5, 2012."

COMPANY'S Ex-PARTE STATEMENT OF ISSUE:

On August 5, 2012, the grievor was called as the Conductor on G80651 06, travelling light engine with two units from Walker on the way to Bissell to assemble the cars for their train. At MP 4.7 on the Edson Subdivision, the grievor passed signal 47D1, which was displaying a Stop Signal. Train G80651 06 did not stop as required by CRO Rule 439.

The Company conducted an investigation of the incident and determined that Conductor Nykolaychuk had violated CROR Rule 439 and subsequently assessed him a 90-day suspension.

The Union contends that the suspension was extremely excessive under the circumstances, and requests that the discipline be mitigated to a much lesser degree, and that Conductor Nykolaychuk be made whole for lost wages and benefits. The Union also contends a violation of Article 117.8 of Agreement 4.3, alleging the Company has fined the grievor.

The Company disagrees with the Union's contentions.

**FOR THE UNION:
(SGD.)**

**FOR THE COMPANY:
(SGD.) K. Madigan
Vice President Human Resources**

There appeared on behalf of the Company:

P. Payne	– Manager, Labour Relations, Edmonton
K. Morris	– Senior Manager, Labour Relations
D. VanCauwenbergh	– Director, Labour Relations

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
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R. Hackl	– General Chairman, Saskatoon
R. Donegan	– Vice General Chairman, Saskatoon
R. Thompson	– Vice General Chairman, Saskatoon

AWARD OF THE ARBITRATOR

The facts in relation to the actions of Conductor Nykolaychuk are somewhat concerning. By his own account, while riding the point of his movement travelling from the shop track at Edmonton on August 5, 2012 the grievor called to his locomotive engineer that they were facing a medium to stop signal with forty car lengths to go. Having made that communication he immediately realized that they were only four car lengths away from a signal which was in fact a stop signal and not a medium to stop signal. In fact it does not appear disputed that the dwarf signal in question displayed a single light and could not have displayed a medium to stop signal.

Given the degree of inattention displayed by the grievor, and his prior disciplinary record, which includes a substantial number of rules violations, the Arbitrator has some difficulty with the position of the Union that a 90-day suspension was excessive. While it is true, as the Union notes, that other similar violations have resulted in lesser degrees of discipline to other employees, it is trite to say that each case must be determined on its own particular facts. In the instant case the degree of the grievor's inattention and his prior disciplinary record are significant factors to be taken into account, and there are few, if any, mitigating factors in his favour. While it may be that the locomotive engineer

had his period of suspension reduced to 60-days, in the circumstances the degree of responsibility does reside principally with Conductor Nykolaychuk.

The grievance is therefore dismissed.

May 17, 2013

MICHEL G. PICHER
ARBITRATOR