

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4216

Heard in Edmonton, June 12, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED STEELWORKERS – LOCAL 2004

DISPUTE:

The Suspension of Special GRP I machine Operator Mr. Barry Bugera.

JOINT STATEMENT OF ISSUE:

On October 19, 2012 Mr. Bugera was working as a Machine Operator in the back track at Exira on the Rivers Subdivision with fellow employee Dan Frith. When they entered the back track, the switch was left lined in reverse in violation of CROR Rule 104, causing Train 201 to go into emergency and enter the backtrack. Mr. Bugera was assessed with a 30-day suspension for violation of Rule 104. The Union submits that machine operators under supplemental 10.3 are to work under the direction of Forman as they have enough responsibility with regards to care and control of the equipment. The Union appealed the discipline contending that the 30 day suspension was too severe. The Union submits that the grievor is a long service employee with a good work record. The Union recommends the 30-day suspension be expunged and that Mr. Bugera be made whole for all lost earnings including but not limited to: loss of seniority, interest, compensated service along with any loss of benefits for the time period he was held out.

The Company disagrees with the Union's position and has declined the grievance.

FOR THE UNION:
(SGD.) M. Piche
Staff Representative

FOR THE COMPANY:
(SGD.) B. Laidlaw
Manager Labour Relations

There appeared on behalf of the Company:

B. Laidlaw	– Manager, Labour Relations, Winnipeg
T. Bourgonje	– Chief Engineer, Edmonton
L. McCrimmon	– Manager for Operating Practices, Edmonton
E. Reid	– Senior Engineering Officer, Edmonton

There appeared on behalf of the Union:

M. Piche	– USW Staff Representative, Toronto
G. Colli	– Chief Stewart Prairie, Winnipeg

AWARD OF THE ARBITRATOR

The facts of the instant case are not in substantial dispute. The grievor, Mr. Barry Bugera, is a machine operator who, along with machine operator Dan Frith, performed work on the Rivers subdivision on October 19, 2012. Mr. Bugera operated a Tamper while Mr. Frith was responsible for the operation of a Broom. At the end of their work day they proceeded to store their machines in the back track at Exira, a siding location at mile 85.2 on the Rivers subdivision.

The back track at Exira runs east to west off the siding track of that location and is connected to the siding by a hand operated switch. It is common ground that Mr. Bugera held TOP protection for the siding where in fact they did perform some work. When that work was completed, at or about 15:00 they then proceeded to move their machines into the back track for storage before returning to Portage La Prairie. The record confirms that Mr. Frith reversed the back track switch and first entered the back track, after Mr. Bugera had first removed a derail in the back track. Mr. Bugera entered the back track after Mr. Frith on his Tamper. Having replaced the derail he traveled onwards to the same location, some five hundred feet into the back track, where Mr. Frith had parked the Broom. Having secured their machines the employees boarded their truck, cancelled their track occupancy permit and departed for Portage La Prairie.

Unfortunately, as the record discloses, neither of the employees closed the switch to the back track, and it was left in the open position, which would line any traffic travelling westward on the siding into the back track. At approximately 16:20 train 301 travelled westward and entered the siding at Exira. Its crew came upon the improperly

lined switch and placed their train into emergency. However, their train moved through the switch and into the back track approximately two hundred feet, with three of the locomotives wheels eventually straddling the derail. Cutting off the derail and correcting the situation caused a delay of approximately ninety minutes to train 301.

Following this incident the grievors were removed from service and, as a result of the formal investigations conducted were each assessed a 30-day suspension for violations of Rule 104 of the CROR.

The Union does not contend that the grievors were without any responsibility for what occurred. Their representative submits, however, that given their long service and positive records, the assessment of 30 day suspensions is excessive in the circumstances. It also argues that Mr. Bugera was effectively invested with the responsibilities of a foreman, arguing that if in fact a foreman had been assigned to the two machine operators the incident might well have been avoided.

In a prior award concerning discipline assessed to assistant Conductor Zuefelt for a violation of rule 104 when a main track switch was left improperly lined at Ingersoll, Ontario (61 C.L.A.S. 186), this Office reviewed the general scope of discipline assessed for violations of rule 104. In that award the following comment is found: "More typically, however, the penalty for such a violation has been the assessment of demerits in the range of 30 to 45 or a suspension generally in the range of 30 to 60 days."

The records of this Office also reflect the potential for catastrophic circumstances caused by violations of rule 104. Notably, in CROA 1198 the failure to properly line a switch caused a passenger train to enter a storage track where it collided with other cars, resulting in the death of four passengers and a locomotive engineer. Obviously, leaving a switch improperly lined in territory that involves mainline traffic is an extremely hazardous mistake deserving of a commensurately serious degree of discipline.

The record discloses the Mr. Bugera has thirty-three years of service and a positive disciplinary record. In fact, he was disciplined on only one occasion over the span of his career, incurring twenty demerits in February of 2000 for a rule violation. While I agree that that record must be viewed as a mitigating factor in the case at hand, I am not persuaded that the disciplinary penalty assessed by the employer is inappropriate. As noted above, it falls within the general range for similar infractions. Additionally, the facts as presented would suggest that it was Mr. Bugera who had the last clear opportunity to close the switch leading to the back track, as his was the second machine to enter the area. While he returned the derail to its proper position he obviously forgot to close the switch. In all of the circumstances I am not prepared to disturb the assessments of a 30-day suspension against the grievor.

For the foregoing reasons the grievance is dismissed.

June 14, 2013

MICHEL G. PICHER
ARBITRATOR