

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4217

Heard in Edmonton, June 12, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED STEELWORKERS LOCAL 2004

DISPUTE:

The 30-day suspension of machine operator Mr. Dan Frith.

JOINT STATEMENT OF ISSUE:

On October 19, 2012 Mr. Frith was working as a Machine Operator in the back track at Exira on the Rivers Subdivision with fellow employee Barry Bugera. 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. Frith was assessed with a 30-day suspension for violation of Rule 104. The Union submits that from the investigation it was clear that Mr. Frith was not instructed to be in charge. The Company had instructed him to work under the direction of another machine operator and without a Forman to insure proper track protection and his safety. The Union appealed the discipline contending that the 30 day suspension was unwarranted. 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. Frith 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 grievance are fully related in the decision of this Office in CROA&DR 4216. The grievor, Machine Operator Dan Frith, held a copied track occupancy permit in relation to performing work in the siding at Exira on the Rivers subdivision on October 19, 2012. After he and his co-operator Mr. Barry Bugera, had completed their work for the day they stored their machines in the back track at Exira, leaving the switch to the back track open. Shortly thereafter a train entered the back track and fortunately was able to stop by an emergency brake application. As a result of the incident both employees were assessed 30-day suspensions.

Having closely examined the instant grievance, the Arbitrator is satisfied that there is reason for assessing a lesser degree of responsibility to Mr. Frith. The record confirms that Mr. Frith entered the back track first, and proceeded a substantial distance. After his partner Mr. Bugera had entered the back track he observed him returning the derail to its position and incorrectly assumed that Mr. Bugera was closing the switch which he had just gone through. There does not appear to be any dispute that as between the two employees it was Mr. Bugera's role to close the switch, as he was closest to it. That does not, of course, exonerate Mr. Frith from his responsibility as holder of a track occupancy permit to ensure that in fact the switch was closed. I am nevertheless satisfied that a somewhat greater degree of responsibility resides in Mr. Bugera for his failure to close the switch, as he was the second of the two employees to proceed through it, and Mr. Frith was at that time some distance into the back track.

The material before me confirms that the grievor is a long term employee with thirty-four years of service. During that time he has maintained a relatively good disciplinary record, having been disciplined only three times and having incurred no discipline for the past seventeen years. In all of the circumstances I am satisfied that it is appropriate to reduce the discipline assessed to Mr. Frith, albeit a serious penalty should nevertheless remain.

For these reasons, the grievance is allowed, in part. The Arbitrator directs that the grievor's record be corrected to reflect a twenty day suspension for his involvement in the incident at Exira on October 19, 2012, with the grievor to be compensated for the difference in his wages and benefits lost.

June 14, 2013

MICHEL G. PICHER
ARBITRATOR