

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4232

Heard in Montreal, September 10, 2013

Concerning

VIA RAIL CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The dismissal of Locomotive Engineers Matt Vork and David Bjornsson

ExPARTE STATEMENT OF ISSUE:

On October 29, 2011, Messr. Vork and Bjornsson were assigned to train No. 692 operating between Canora SK, and Winnipeg MB. While operating train No. 692 Messr. Vork and Bjornsson held a TGBO requiring them to meet CN train No. 853 at Station Meharry. Train No. 692 went past the Meharry siding. Following an investigation, Messr. Vork and Bjornsson were discharged and subsequently allowed to retire, however without being afforded the usual retirement benefits of the VIA Rail Pass, Health Care Spending Account, Life Insurance and Benefit Purchase Options.

The Union contends that the discharge of Messr. Vork and Bjornsson is unwarranted and excessive under the circumstances. The Corporation did not take into account the mitigating circumstances. The Union requests that the discipline be removed from their disciplinary records and that they be reinstated without loss of seniority and compensated for all lost wages and benefits. In the alternative, the Union request that Messr. Vork and Bjornsson be permitted to remain in retirement, however that they be provided all the usual benefits of retirement from VIA Rail as noted above.

The Corporation submits that Messr. Vork and Bjornsson committed serious Rule and Safety violations resulting in a potential head-on collision. Further to this, the Corporation submits they violated additional CROR and Safety Rules by reversing the train back into the Meharry siding where they waited for CN Train No. 853 to meet up with them. The Corporation submits that under the circumstances the dismissal of Messr. Vork and Bjornsson was warranted and appropriate.

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

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

E. Houlihan
M. Mcammond
J. Bennet

– Director Employee Relations, Montreal
– Senior Manager Director, Kamloops
– Manager Train Operations, Winnipeg

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
A. Stevens	– Counsel, Toronto
B. Willows	– General Chairman, Edmonton
B. Ermet	– Vice General Chairman, Edmonton
R. Morn	– Retired Local Chairman, Winnipeg
D. Bjornsson	– Grievor, Winnipeg

AWARD OF THE ARBITRATOR

The facts of this grievance are not in substantial dispute. The grievors Matt Vork and David Bjornsson were assigned as the operating locomotive engineer and the in charge locomotive engineer, respectively, on train 692 operating between Canora and Dauphin on October 29, 2012. Their train apparently consisted of 2 locomotives, a baggage car, two economy class cars, a dining car and three sleeping cars, carrying some 55 passengers and six on board employees excluding the grievors. The orders under which the grievors were operating required them to proceed eastward from Togo to Meharry on the Togo subdivision. Their clearance instructed them to enter the siding at Meharry at the west switch. According to an OCS clearance governing their travel, the grievors were advised that they were not to leave the Meharry siding until CN Freight Train 853, coming from the opposite direction, cleared Meharry.

Notwithstanding their orders, as they approached Meharry Mr. Vork and Mr. Bjornsson failed to confirm their location by radio broadcast, as required and simply forgot to stop and enter the siding as directed. In the result, the operated train 692 some 4.3 miles beyond the limits of their authority.

In so proceeding, the grievors had set their passenger train on a collision course with CN Train No. 853, travelling westwards towards them. It appears that at mile 31 of the subdivision the locomotive engineers operating the CN train, a freight movement of substantial size, saw a headlight approaching on the single main track. What occurred at that point is reflected in the following excerpt from the Railway Investigation Report prepared by the Transportation Safety Board of Canada, dated October 29, 2011:

At approximately 1215, the crew of CN freight train 853 saw the headlight of the oncoming VIA train. The CN crew members contacted VIA 692 by radio and began to stop their train, which was travelling westward at 25 mph. Upon hearing the radio call from CN 853, the crew members of VIA 692 realized that they had travelled beyond the limits of their authority and immediately brought the train to a stop. VIA 692 stopped with the head-end locomotive at Mile 32.7, approximately 4.3 miles past its authorized limit.

The 2 opposing trains came to a stop approximately 1500 feet apart. Without requesting authority from the RTC, VIA 692 then began a reverse movement on the main track and backed into the siding at Meharry. CN 853 proceeded westward to Meharry and came to a stop at the east switch.

As is evident from the foregoing, the grievors clearly operated their train some 4.3 miles beyond their authorized limits, having failed to take the siding at Meharry as ordered. It does not appear disputed that in accordance with operating rules, when they discovered the situation they should have not only stopped their train, but immediately communicated their situation to the Rail Traffic Controller to obtain authorization for the reverse movement which they in fact undertook without authority. The record before the Arbitrator confirms that the grievors reversed their train to the Meharry siding, moving into the siding at that location. It appears that when CN Train 853 pulled up to that location it stopped beside them and the two crews met and conversed briefly in the cab of the freight train. Only after that meeting did the crew of CN train 853 notify the Rail

Traffic Controller of what had occurred. Mr. Vork then called the VIA control centre to finally make a report of the incident to the Corporation's supervisors.

Shortly after the incident CN trainmaster Harvey Harapiak arrived at the Meharry siding. He removed the crew of train 853 from service for "critical incident stress" and escorted the grievors Vork and Bjornsson to Dauphin where they were tested for alcohol and drugs, recording a negative result.

Following disciplinary investigations in respect of the above events the grievors were terminated for the rules violations which they committed including : " ...failure to comply with OCS Clearances 123-5 and 123-6, and all relevant CROR Rules while working as the locomotive engineer VIA on Train 692 on the Togo subdivision on October 29, 2011 resulting in a main track authority violation and near head on collision with Train 853".

As the grievors were eligible to retire with full pensions at the time of the incident, they did retire effective January 1, 2012. Because they were dismissed they lost their entitlement to certain benefits including the railway pass, the retirees group benefit plan, a health care spending account and a death benefit payable to their estate.

The Union submits the discharge of the grievors was not appropriate in all of the circumstances. Its counsel stresses that in fact they did not attempt to conceal the events or mislead the Corporation. He stresses that they were forthcoming in the sense

that they communicated with Company officers immediately upon having returned their train to the siding at Meharry and that they had at all times been candid and forthright in recounting the events. Counsel further stresses that both grievors are long term employees and that Mr. Vork had recorded only two prior operating infractions, while no operating infractions appear on the career record of Mr. Bjornsson. He submits that the prior positive records of both employees, coupled their long service, constitute compelling mitigating factors which would justify a reduction of the penalty in the case at hand. He characterizes the incident here under examination as being entirely out of character for both grievors as reflected in their respective forty years of good service.

Having considered the facts and submissions, I am satisfied that this grievance should be allowed, but only in part. I do not consider that this Office should effectively nullify the termination of the grievors and reinstate them into employment. While they each had several years of eligible service remaining before their retirement, I consider the fact that they chose to retire, apparently with the benefit of unreduced pensions, that reinstatement would not be an appropriate remedy. However, considering that both have lost several years of potential pensionable service, I am inclined to agree with the Union's submission that it is excessive in the circumstances to deny them the benefits which normally accrue to a retiree which have been denied to them. Given the length and quality of their service, in my view they can be fairly viewed as having earned those benefits, although I would not disturb the Corporation's decision to terminate their services.

The grievance is therefore allowed in part. The Arbitrator directs that the grievors be reinstated "on paper" so that their dismissal is removed, thereby giving them entitlement to the benefits which they have been denied. That remedy is conditional on the grievors not in fact returning to active service and accepting to continue in their retirement and pension entitlement, including the enhanced benefits.

September 13, 2013

MICHEL G. PICHER
ARBITRATOR