

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4249

Heard in Montreal, October 10, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of discharge of Locomotive Engineer Barry Moore.

JOINT STATEMENT OF ISSUE:

Following an investigation, Locomotive Engineer Moore's employment was terminated "for your failure to exercise ongoing attentiveness and vigilance by passing signal 01-4a Belleville Subdivision without authority while working as a Locomotive Engineer on train 301-414 in Smiths Falls on April 7, 2011, a violation of the following rules, including CROR 34B SSI in the Summary Operating Bulletin: CROR 439, CROR 34 A, CROR 34 B, CROR 106, CROR General Notice, CROR General Rule A (iii), (vi), (x)."

The Union contends that Locomotive Engineer Moore's dismissal is unwarranted and excessive in all of the circumstances. The Union requests that Locomotive Engineer Moore be reinstated 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.

The Company disagrees and denies the Union's request.

FOR THE UNION:
(SGD.) B. Brunet
General Chairperson

FOR THE COMPANY:
(SGD.) D. Freeborn
Director Labour Relations

There appeared on behalf of the Company:

D. Freeborn	– Director Labour Relations, Calgary
J. Poeta	– Superintendent,

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
B. Brunet	– General Chairman, Montreal
J. Campbell	– Vice General Chairman, Toronto
B. Moore	– Grievor, Pickering

AWARD OF THE ARBITRATOR

The parties agree that on April 7, 2013, train 301-414, crewed by Mr. Moore, Locomotive Engineer, and Mr. Miranda, Conductor passed stop signal 01-4A Belleville Subdivision in Smith Falls. The context in which the Rule 439 violation took place, among other rules relating to the crew's failure to stop is as follows.

While pulling forward subsequent to a cut on Track 2 Long, Mr. Miranda thought their lift seemed heavy. He decided to revisit the paperwork associated with it. As Mr. Miranda did so, Mr. Moore misidentified signal 01-4a at the west end of Track 2 Long as "restricting" (yellow) instead of red. He called the signal out as "restricting." Mr. Miranda acknowledged the signal as restricting without having seen the signal. By the time he did so, the train had passed the stop signal.

Shortly thereafter, at approximately 10:00 hours, the RTC contacted the crew to confirm their location. When they confirmed they were west of signal 01-4a, the RTC immediately instructed the crew to stop their train and standby. The train stopped approximately 20 cars west of signal 04-2 on a main track. A VIA train was expected in Smith Falls approximately 10 minutes after train 301-414 entered the main track. During the investigation, Mr. Moore was unable to provide an explanation as to why he had misidentified signal 01-4A other than to state that "that day was sunny" and that he truly believed that it was a restricting signal. At the hearing, Mr. Moore clarified that the signal in question was "dwarf" signal, which made its indication more challenging to identify.

Following an investigation of the incident the company assessed Mr. Moore at 45 demerits. It would be challenging for the Union to argue that it was not reasonable for the Company to assess Mr. Moore at 45 demerit points for what the parties agree were serious rule violations. The assessment against Mr. Moore is in keeping with Mr. Moore's failure to carry out a most crucial and most fundamental responsibility. Moreover, the 45 demerit assessment is consistent with disciplinary assessments for incidents of a similar nature.

As Mr. Moore had had on his record 50 demerit points at the time of this incident, he was dismissed for the accumulation of demerit marks under the Brown system of discipline. Approximately 6 months prior to this incident, on December 17, 2012 Mr. Moore was assessed 25 demerits for failing to ensure proper train handling techniques. On January 31, 2013, Mr. Moore was assessed another 25 demerits for failing to ensure an accurate track release and leaving his train foul of the entrance at Kinnear Yard. Mr. Moore's record also reveals that in 2002 he been assessed at 40 demerit points for allowing his train to exceed its operating authority in occupying a main track, in addition to having been disciplined on two other occasions for Rules Violations/ Safety infractions.

I appreciate that Mr. Moore is deeply remorseful for the April 7, 2013, incident. The Union, on Mr. Moore's behalf argued that a suspension could have been imposed instead of demerits in this case. I do not disagree. That was one option the Company

might have chosen. However, having carefully reviewed the jurisprudence presented to me in this matter, with particular regard to *CROA 3397*, I am not persuaded that this is an appropriate case to disturb what is undeniably within the range of reasonable responses for the violation of Rule 439.

October 14, 2013



CHRISTINE SCHMIDT
ARBITRATOR