

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4252

Heard in Calgary, November 12, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The assessment of a thirty day suspension to Conductor Garth Hack and Assistant Conductor James Sedgwick of Melville, SK for alleged violation of CROR 85, 35, 125 and 106.

UNION'S EXPARTE STATEMENT OF ISSUE:

On July 11, 2011, Messrs. Hack and Sedgwick were operating train L42141-03 from Melville to Canora on the Yorkton subdivision. They were in possession of a valid OCS clearance for the track they were operating on. At approximately 2255, the RTC made a radio broadcast asking for train 421. The Locomotive Engineer on L42141-03 responded. The RTC asked for an "os" — a time by a recognized location — to which the engineer responded that they were by mile 40. The RTC repeated the OS, stating that train 421 was by mile 40 on the Assiniboine Subdivision which the Locomotive Engineer asserted was correct.

Immediately, Conductor Hack and Assistant Conductor Sedgwick corrected the Engineer as their train was on the Yorkton Subdivision and the crew attempted to contact the RTC, eventually doing so. The situation was straightened out and both trains continued on without incident. The Crew completed their tour of duty, were called for the return trip and returned to Melville on a second tour of duty, again without incident. It should be noted that the Crew was required to undergo drug and alcohol testing upon arrival at Melville.

Employee statements were held, the result being that Conductor Hack and Assistant Conductor Sedgwick were both assessed 30 day suspensions. It is the Union's position that this discipline is unwarranted and excessive. There are several mitigating factors that the Company has failed or refused to consider with respect to this assessment of discipline and it ought to be expunged or at least significantly reduced.

The Company disagrees.

FOR THE UNION:
(SGD.) R. Hackl
General Chairman

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

D. Brodie	– Manager Labour Relations, Edmonton
K. Morris	– Senior Manager Labour Relations, Edmonton
P. Payne	– Manager Labour Relations, Edmonton
D. Crossan	– Manager Labour Relations, Prince George

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Caley Wray, Toronto
R. Hackl	– General Chairman, Saskatoon
R. Thompson	– Vice General Chairman, Saskatoon
J. Robbins	– General Chairman, Sarnia
J. Lennie	– Vice General Chairman, Port Robinson

AWARD OF THE ARBITRATOR

The grievors were assessed thirty day suspensions for their alleged violations of CROR 85, 35, 125, and 106 for events which occurred on the Yorkton Subdivision on July 3, 2011.

The record confirms that on that date the grievors were operating train 421 on the Yorkton Subdivision. At the same time, another train also bearing the designation Train 421 was operating on the adjacent Assiniboine Subdivision. The grievor Garth Hack was the Conductor of the movement while James Sedgwick was the Assistant Conductor. The locomotive was being operated by Less Galatiuk, with a conductor trainee also aboard.

At or about 22:55 the rail traffic controller called over the radio for Train 421. It is now understood that he was attempting to reach the train 421 which was not the

assignment of the grievors, but rather the other assignment, operating on the Assiniboine Subdivision. Hearing the call the locomotive engineer picked up the radio handset and replied to it. The RTC then indicated to him that he was seeking a track release which required the crew to confirm their train's location. Locomotive Engineer Galatiuk then provided the location of his train. At the conclusion of the radio communication the RTC then ended by stating "421 (Locomotive) 2596 North by Mile 40 on the Assiniboine Sub at 22:55". To that the locomotive engineer replied, "That's correct, yes."

It is common ground that the locomotive engineer was not correct in confirming the misinformation taken in by the RTC. It is obvious that the RTC mistakenly assumed that train 421 being operated by the grievor and his crew on the Yorkton subdivision was in fact was the different train 421 which was on the Assiniboine subdivision, in respect of which the RTC truly intended to obtain a track release.

Having overheard the communication by Locomotive Engineer Galatiuk, Conductor Hack immediately advised him of his mistake in a lapse of time said to be little more than three seconds. The locomotive engineer immediately recalled the RTC on the emergency channel. Receiving no response on that channel he contacted him on the regular channel and provided the correct information to him. The rail traffic controller then acknowledged that he had been confused, but indicated that all was now in order. It does not appear disputed that during the communication from the lead locomotive, Assistant Conductor Sedgwick, who was in the trailing locomotive, also attempted to

correct the locomotive engineer's mistake by himself communicating through the radio. He then discovered that the engineer was communicating his correction to the RTC.

Upon reaching their Away from Home Terminal the crew were ordered to dead-head home, contrary to their expectation. They were then removed from service and subjected to Drug and Alcohol Testing followed by a disciplinary investigation. At the conclusion of the investigation both Conductor Hack and Assistant Conductor Sedgwick were assessed thirty day suspensions. The Union submits that they did absolutely nothing wrong and should have received no discipline whatsoever.

Having closely reviewed the facts, I agree, in part. What the evidence discloses is that the locomotive engineer, who was closest to the radio console, responded to the RTC's call and erroneously answered the RTC's question with respect to the track release. While it is technically true that a track release is to be given by a conductor, it does not appear disputed that it is not infrequently communicated through the locomotive engineer if he is in fact the person who has responded on the radio.

The Company draws to the Arbitrator's attention the provisions of Rule 85 of CROR. There can be no doubt but that it governs track release reports and places the primary responsibility for such reports on the conductor. During the course of the investigation the grievor acknowledged that he was not fully cognizant with the content of Rule 85 and admitted that in fact it had not been honoured, on the facts related above.

The real issue in the case at hand is the appropriate measure of discipline. The Union submits that the assessment of a thirty day suspension is excessive given the actual facts. Its counsel stresses that the errors made were those of the rail traffic controller and the locomotive engineer and that, if anything, the conductor and assistant conductor made every reasonable effort as quickly as they could, to correct the error which had been committed. This they did when they overheard the rail traffic controller relaying the incorrect locomotive engine number for their movement, causing them to realize that another train was intended to receive the communication in question. That fact was also confirmed by the repeat message of the RTC, indicating that they were identified as being on Mile 40 on the Assiniboine subdivision.

There can be no doubt but that there was a failure on the part of both grievors, to respect the proper operation of Rule 85 of the CROR. That error was, however, a fleeting matter which they promptly corrected as soon as they were able, within a matter of seconds. In contrast, it does not appear disputed that the Rail Traffic Controller, whose confusion caused the problem, did not receive any discipline.

In all of the circumstances I am satisfied with the assessment of a thirty day suspension is substantially excessive. From a practical standpoint, it is arguable that in fact both grievors did absolutely as much as they could to remedy the error committed by their locomotive engineer, along with the rail traffic controller. While there was a

technical violation of Rule 85 of the CROR, in my view a written reprimand would have been ample to bring that matter to the attention of both grievors.

The grievance is therefore allowed, in part. The Arbitrator directs that the suspension assessed against both grievors be removed from their records and that they be compensated for all wages and benefits lost. A substituted discipline in the form of a written reprimand shall be placed on their records for the violation of CROR Rule 85 committed on July 11, 2011.

November 18, 2013

MICHEL G. PICHER
ARBITRATOR