

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4285**

Heard in Montreal, February 11, 2014

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge of Greg Drew #163005 for failing violation of CROR Rule 439 while working at Seagram on the caramat Sub while working as the Conductor on assignment M31641-20.

JOINT STATEMENT OF ISSUE:

Mr. Drew was working as the Conductor on M31641 20 on July 20th, 2013, when his train did pass a signal displaying stop, in violation of CROR 439.

It is the Union's position that the discipline assessed is unjustified, unwarranted, discriminatory and excessive. The Union is requesting that the Grievor be reinstated without loss of seniority or benefits and that the Company remove any/all records of the discharge from the Grievor's personal file and discipline history.

The Company disagrees.

FOR THE UNION:
(SGD.) J. Lennie for J. Robbins
General Chairman

FOR THE COMPANY:
(SGD.) V. Paquet
Labour Relations Manager

There appeared on behalf of the Company:

V. Paquet	– Labour Relations Manager, Toronto
M. Marshall	– Senior Manager Labour Relations, Toronto
D. Gagne	– Senior Manager, Labour Relations, Montreal
D. Larouche	– Manager Labour Relations, Montreal
S. Fusco	– Senior Manager, Labour Relations, Toronto

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
J. Robbins	– General Chairman, Sarnia

J. Lennie	– Vice General Chairman, Port Robinson
N. Drew	– Local Chairman, Hornepayne
R. Caldwell	– General Chairman, Bancroft
P. Boucher	– Vice General Chairman, Belleville
M. Byrnes	– Local Chairman, Capreol
G. Drew	– Grievor, Hornepayne

AWARD OF THE ARBITRATOR

There is no doubt but that the grievor did violate CROR 439, as alleged. As he is a probationary employee, and had been involved in a previous rule 439 violation, the Arbitrator can readily understand the Company's perspective and its ultimate decision in respect of terminating the grievor's services.

However there are mitigating factors which I believe must be considered. This incident occurred at mile 91.8 of the Caramat subdivision, at the siding of Seagram. To accommodate the meet of other trains the grievor's train was placed on that siding. As the siding could not accommodate the full length of his train, he was required to break it and place part of his train into the backtrack. When the siding manoeuvres were completed and the train was broken into two sections, the locomotive sat a short distance from dwarf signal 908D which, it is agreed, displayed a stop signal.

After the meet of the other trains was completed and they had proceeded on their way, the grievor communicated with his locomotive engineer to reassemble their train and carry on their assignment. It is important to appreciate that at that time Mr. Drew was located at the back track switch, around a curve and some 3000 feet distance from

the locomotive and the dwarf signal. As he had no view of the signal he was dependent upon his locomotive engineer with respect to its status.

It appears that while they were at the siding the locomotive engineer, Vance Atkinson, communicated with the dispatcher to copy a work authority to double up the train, but did so without informing the grievor. Most importantly, when it was time to reassemble their train Mr. Drew communicated with locomotive engineer Atkinson who advised him that : "...switch is lined and signal is good, 316 pulling." However Mr. Atkinson did not advise the grievor as to the specific indication showing on the dwarf signal 908D, which in fact was a restrictive signal. Locomotive engineer Atkinson then operated the train past the signal and onto the main line, reversing direction to allow the reassembling of their train. In so doing, he clearly violated Rule 439 by proceeding past the stop indication of dwarf signal 908D at Seagram. Later, after travelling some forty miles beyond that location, the grievor and his locomotive engineer were instructed to place their train into a siding, from where they were pulled from duty pending an investigation. Following the investigation, and the determination that their train had violated Rule 439 at Seagram, both the grievor and his locomotive engineer were discharged. Subsequently, locomotive engineer Atkinson, who is a long service employee with no prior Rule 439 violation on his record, was reinstated subject to an extensive suspension.

I consider it significant that the Company did not, in the instant case, dismiss the grievor as a probationary employee who was found to be unsuitable. Rather, it chose to ground his discharge on his violation of Rule 439, on July 20, 2013.

Having reviewed the evidence and materials before me, I am satisfied that the grievor obviously made himself subject to a severe degree of discipline by being involved in a violation of Rule 439. I nevertheless consider that there are important mitigating factors to be taken into account in the instant case. Firstly, the grievor had no sightline to the signal and switch location at the head-end of his train when he communicated with his locomotive engineer to commence the process of reassembling their train for departure from Seagram. He was, in other words, compelled to rely upon the locomotive engineer's report as to the status of the switch and signal essential to proceeding properly with that operation. What he was told over the radio by his locomotive engineer is that the switch was lined and "signal is good". It does not appear disputed that the dwarf signal at that location could give only two possible indications, being stop and proceed. The Company's representatives stress, however, that it was incumbent upon Mr. Drew to be more specific in his communication with the locomotive engineer, and that he should have asked the engineer to specifically describe the nature of the signal being given by dwarf 908D. The position of the employer is that the expression "signal is good" is not sufficiently elaborate or detailed to comply with the obligation on the crew at that time. The situation appears to be further complicated by the fact, that unbeknownst to the grievor, locomotive engineer Atkinson incorrectly

assumed that he was authorized to proceed by virtue of an authority under Rule 577, a belief which he never communicated to Mr. Drew.

In the result, the grievor, who had no view of the signal or the switch, was told by his locomotive engineer that the signal was "good", which at a minimum I am satisfied would indicate to him that it was permissive, and that he was therefore proceeding to move their train. While I accept that it would have been more appropriate for the grievor to ask for a specific description of the indication being given by the dwarf signal, the overall facts described must, in my view, be viewed in a mitigating light. While Mr. Drew might have exercised better judgement in the thoroughness of his communication with his locomotive engineer, he was nevertheless compelled to rely on Mr. Atkinson to a great extent as to the permissibility of moving their train.

In my view the facts disclosed do not preclude the possibility of the grievor being reinstated into his employment, to be given another chance to demonstrate that he can be a productive employee. The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for any wages or benefits lost with his period out of service to be recorded as a suspension for the Rule 439 violation.

February 17, 2014

MICHEL G. PICHER
ARBITRATOR