

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4320**

Heard in Montreal, July 8, 2014

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal the assessment of a discharge to Locomotive Engineer E. Bugoy for his "violation of CRO Rule 439 violation, CRO Rule 564 (a) violation, and CRO Rule 34 and 35 while operating as locomotive engineer on train Q11531-24 on June 26 2013.

**JOINT STATEMENT OF ISSUE:**

On June 26, 2013, Mr. Bugoy was assigned as the Locomotive Engineer on Train Q11531-24, when it failed to stop prior to passing Signal 1783-1, indicating "Stop", without proper authority.

The Company conducted an investigation of the incident and determined that Locomotive Engineer Bugoy had violated CROR Rules 439, 564 (a), and 34 and 35, and subsequently assessed him with a discharge from CN service.

The Union contends that the discharge was excessive under the circumstances, and requested that the discipline be significantly reduced.

The Company disagrees with the Union's contentions.

**FOR THE UNION:**  
**(SGD.) B. Ermet**  
**General Chairman**

**FOR THE COMPANY:**  
**(SGD.) D. Brodie**  
**Vice President, Human Resources**

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
T. Brown	– General Manager WOC, Edmonton

There appeared on behalf of the Union:

M. Church	– Counsel, Caley Wray, Toronto
B. Ermet	– Senior Vice General Chairman, Edmonton
K.C. James	– Vice General Chairman, Melville
B. Willows	– General Chairman, Edmonton

## AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor operated his train in violation of a number of rules, and in particular CROR 439 on Jun 26, 2013. On that day he was operating train Q11531-24 from Melville to Biggar Saskatchewan, accompanied by his conductor Mr. Sean Keefe. Having passed Clavet station westbound at approximately 18:00 the grievor's train encountered a number of signals, including an advanced clear to stop and a clear to stop as the train approached signal 1783-1. There is no dispute that as the grievor's train approached that signal it displayed a red stop indication and that the grievor's train in fact proceeded to some twenty car lengths beyond that point, into a section of track under the control of engineering forces.

It does not appear disputed that at the time of the incident Conductor Keefe was in the course of radio communication with the Rail Traffic Controller, copying a track warrant. While the grievor states that he called the relevant signals as his train progressed, it is less than clear that his calls were heard or responded to by his conductor. On the whole, there can be little doubt but that the grievor was clearly at fault and that by reason of his inattention he engaged in a Cardinal rule violation by violating the stop indication at signal 1783-1. During the course of his disciplinary investigation Mr. Bugoy stated that he did not in fact expect to encounter a stop signal, notwithstanding the prior clear to stop indication signals he had received, including, an advanced clear to stop on at signal 1757 and a clear to stop signal at 1769. On the whole of the evidence, I am compelled to conclude that the rule violation committed by

the grievor was avoidable and was the result of his own wrong assumptions and inattention.

Unfortunately, the record confirms that this is the second Rule 439 violation recorded against locomotive engineer Bugoy. Moreover, his prior disciplinary record counts no fewer than eight instances of discipline for the violation of operating rules or procedures. He was also previously discharged for the accumulation of demerits in 2002, being reinstated by the Award of this Office CROA 3353. While the grievor was absent for a number of years by reason of illness, it is not disputed that he has recorded two Rule 439 violations within a period of five years of active service.

Upon a consideration of the instant case I have substantial concerns for the merits of the submissions made on behalf of the grievor. Significantly, his disciplinary record is far from impressive. As the Company stresses, he has never had a year free of discipline since the year 2000, insofar as his active service is concerned. His record stood at fifty-five active demerits at the time of this culminating incident.

With respect, the Arbitrator can see no responsible basis upon which to alter the outcome determined by the Company. The record confirms that, as his record stood at fifty-five demerits, the Company gave the grievor further chances by imposing other discipline in the form of three suspensions, of four days, three days, and fifteen days, respectively in 2012 and 2013. In the face of the grievor's prior record, and with particular regard to the repeated instances of operating rule violations committed by him

over the years, I am satisfied that the Company has followed the proper principles of progressive discipline in dealing with locomotive engineer Bugoy, and that it is not appropriate in the instant case to substitute any different penalty, given that this involves his second violation of a Cardinal Rule, CROR 439, effectively within five years of active service.

For the foregoing reasons the grievance must be dismissed.

July 14, 2014

---

MICHEL G. PICHER  
ARBITRATOR