

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4354

Heard in Montreal, January 14, 2015

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The assessment of a 21-day suspension to Locomotive Engineer J. Cinq-Mars on December 5, 2013, “for failing to have proper documents, a ‘Train Specific TGBO’ to occupy the LaRiviere Subdivision mainline, in violation of CRO Rule 157, in Winnipeg, MB.”

JOINT STATEMENT OF ISSUE:

The Union contends that there was no just cause for discipline and that the assessment of discipline was arbitrary, unfair, and impartial. The Union requests that the grievance be allowed and the 21-day suspension be removed from Locomotive Engineer Cinq-Mars’ record. In the alternative, the Union requests that the discipline imposed be reduced to an appropriate level.

The Company has denied the Union’s appeal and contends that it had proper grounds to impose a 21-day suspension.

FOR THE UNION:
(SGD.) G. Edwards
General Chairman

FOR THE COMPANY:
(SGD.) L. Smeltzer
Labour Relations Officer

There appeared on behalf of the Company:

B. Medd – Labour Relations Officer, Calgary

There appeared on behalf of the Union:

K. Stuebing – Counsel, Caley Wray, Toronto
G. Edwards – General Chairperson, Revelstoke
H. Makoski – Senior Vice General Chairperson, Winnipeg
G. Brunette – Local Chairperson, Winnipeg
J. Cinq-Mars – Grievor, Winnipeg

AWARD OF THE ARBITRATOR

The grievor was issued a twenty-one day suspension for a violation of CRO Rule 157. On November 16, 2013 the grievor, employed by the Company as a Locomotive Engineer, entered the mainline on the LaRiviere Subdivision without a Train Specific TGBO (Tabular General Bulletin Order). The TGBO is governed by CROR operating rules and provides the authority for a train to run on a particular track at specific times.

CRO Rule 157 provides as follows:

157. Tabular General Bulletin Order (TGBO)

(a) A movement must not occupy any track where TGBO is applicable, unless it is in possession of the current TGBO.

Overlapping TGBO and DOB Limits - A movement may occupy any track within DOB limits or portion of the DOB limits where TGBO limits overlap and are included in the applicable DOB limits over which the movement will operate. Movements required to operate outside of DOB limits must operate their entire trip with a TGBO addressed to them unless authorized by the RTC or by special instructions.

(b) A crew of a movement within TGBO limits with a TGBO that includes an item that cancels the TGBO at a specific time, must communicate with and be governed by instructions of the RTC before the expiry time. If unable to communicate with the RTC and unable to clear TGBO limits, the movement must be stopped.

(c) **TGBO Verification:** All crew members must ensure that their movement is properly designated on their TGBO, it contains the correct number of pages and that the limits cover the specific routing. If an incorrectly designated TGBO is received or there is no TGBO for that movement the RTC must be contacted immediately.

(d) When designated using the movement identification number, the train journal, list or other acceptable document may be used for verification. If the designation on the TGBO is incorrect, a change of designation must be issued by the RTC. If the designation of the train journal, list or other acceptable document is incorrect while the TGBO designation is correct, the designation on the train journal, list or other acceptable document may be changed when authorized by the RTC, a company officer or other employee who has access to the correct information.

The evidence discloses that as part of the preparation for the day, the grievor was provided with paperwork by the yard foreman. In order to proceed, both a LaRiviere Subdivision TGBO and a Train Specific TGBO were required. The grievor understood these were required before entering the main track. The yard foreman provided a clearance and two TGBO's. The grievor read through the first TGBO and there was another TGBO behind it and he "believed we had the appropriate paperwork". The investigation material discloses that the grievor believed from his conversation with the yard foreman that they had confirmed the Train Specific TGBO. That was in fact not the case, as there was no Train Specific TGBO for the LaRiviere line in the paperwork provided to him. The grievor did not realize he did not have the Train Specific TGBO until contacted by the Trainmaster who had been contacted by the Chief of Dispatching.

The Company contends that the grievor made a reckless assumption, did not offer an apology and asserts there are no mitigating circumstances. It relies also on deterrence, the safety critical nature of the operation and the importance of the TGBO requirements.

The Union disputes generally the manner in which the company has begun imposing suspensions and submits it is arbitrary, unfair and unreasonable.

The Union agrees there was a violation of CRO Rule 157 but says the penalty levied was excessive. It relies on the fact that the yard foreman verbally advised the


grievor that the proper paperwork was there to occupy the mainline. It says that the yard foreman's lack of experience and some earlier confusion on the part of the trainmaster when the yard foreman was obtaining the paperwork were contributing factors to the incident.

The TGBO is an important report and ensuring that a train specific TGBO was obtained before entering the line was a fundamental responsibility of the grievor. This requirement ensures the safe operation of the train. In **CROA&DR 3781** the Arbitrator substituted twenty-five demerits for a discharge and awarded no back pay, after an eight month absence, to a grievor who had not properly initialled his TGBO. In **CROA&DR 2936** the Arbitrator upheld the assessment of thirty demerit points, which resulted in dismissal for accumulation, for a grievor who operated his train beyond the limits of his TGBO. Both cases referred to the seriousness of the infraction and highlighted the importance of the TGBO and its requirements.

Attention and adherence to the TGBO requirement is extremely important. In this case the grievor is a nineteen years' service employee with a good work record and at the time of the incident had no demerits on record. I am persuaded that a reduction in penalty is warranted. I therefore substitute a ten day suspension, which is a substantial penalty reflective of the seriousness of the conduct taking into account the good work record of the grievor and the circumstances under which this error occurred.

Accordingly the grievance is allowed in part. The grievor's record shall be amended to reflect a ten day suspension. He is to be compensated for his loss of wages and benefits corresponding to the difference between the twenty-one day suspension and the reduced suspension as ordered by the Arbitrator, and without loss of seniority.

February 5, 2015



MARILYN SILVERMAN
ARBITRATOR