

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION  
CASE NO. 4391**

Heard in Calgary, May 12, 2015

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the assessment of discharge to Conductor Nykolaychuk for his violation of CRO Rule 439, going by signal 1396-1 displaying red in Wainwright on the Wainwright Subdivision, while working as the conductor on the G80651-27, on August 27, 2014.

**COMPANY'S EXPARTE STATEMENT OF ISSUE:**

On August 27, 2014, the grievor was called as the Conductor on G80651-27, Walker to Wainwright. At Milepost 139.40 on the Wainwright Subdivision, the grievor passed signal 1296-1 which was displaying a stop signal. Train G80651-27 did not stop as required by CRO Rule 439.

The Company conducted an investigation of the incident and determined that Conductor Nykolaychuk had violated CRO Rule 439 and subsequently assessed discharge.

The Union contends that the discharge was excessive under the circumstances, and requests that the discipline be mitigated to a much lesser degree, and that Conductor Nykolaychuk be made whole for lost wages and benefits.

The Company disagrees with the Union's contentions.

**FOR THE UNION:**  
**(SGD.)**

**FOR THE COMPANY:**  
**(SGD.) P. Payne for D. VanCauwenbergh**  
**Director Labour Relations**

There appeared on behalf of the Company:

P. Payne	– Manager Labour Relations, Edmonton
K. Morris	– Senior Manager Labour Relations, Edmonton
T. Brown	– General Manager, Edmonton
V. Paquet	– Labour Relations Manager, Toronto
M. Marshall	– Senior Labour Relations Manager, Toronto
A. Blokzyl	– Assistant Superintendent, Toronto
R. Helmle	– Manager CMC Eastern Canada, Toronto
R. Baker	– Supervisor, Edmonton
J. Crevier	– Nurse Case Manager, Edmonton

There appeared on behalf of the Union:

M. Church	– Counsel, Caley Wray, Toronto
R. Donegan	– General Chairman, Saskatoon
R. Thompson	– General Chairman, Saskatoon
J. Robbins	– General Chairman, Port Robinson
K. Christie	– Vice Local Chair, Edmonton

### **AWARD OF THE ARBITRATOR**

The grievor was discharged for a CRO Rule 439 violation, going by a stop signal displaying red. On August 27, 2014 the grievor was the conductor on a train travelling on the Wainwright subdivision. The grievor's train was travelling at approximately 8 mph and failed to stop as indicated by the Stop signal displaying red. The material discloses that at the time of the infraction the crew was discussing possible mismarshalling issues. There was no communication of the signal, as is required, between the crew. The grievor did not realize he had passed the red signal until contacted by the RTC that the alarm had been triggered in the office. The investigation material discloses that the grievor explained that he was focussed on the marshalling of the train and trying to contact the outbound crew, who had changed radio channels and so forgot about the signal. The grievor acknowledged that the incident represented a serious rule violation and expressed regret that he allowed himself to get distracted.

This incident was the second Rule 439 violation for the grievor, an earlier one having occurred some two years prior, on August 5, 2012. In that case the grievor was given a ninety-day suspension which was upheld at arbitration in **CROA&DR 4203**. The grievor also has, as noted in **CROA&DR 4203** a “substantial number of rule violations”.

The Union asks that the penalty of discharge be mitigated. It relies on the grievor's long service, notes he was discipline free from 1988-1998 and had no active demerits at the time of the incident. In relation to the incident itself the Union highlights the mismarshalling issue and that the grievor was going slowly and only passed the signal by a short distance.

The grievor occupies a safety critical position. A Rule 439 violation, allowing a train movement to proceed through a stop signal, is a serious offence and has consistently been viewed as such by this Office (see **CROA&DR 2356, 3745, 4278** and **4320**).

This Office has also addressed the issue of discipline for an employee who has a second Rule 439 violation. In **CROA&DR 4278** a discharge was upheld where the grievor had been on the railroad for fifteen years (with prior service counted) and had a commendable record. He had turned his attention away from the tracks to perform double checks and check the volume and station of his radio. In **CROA&DR 3972** and **3866**, relied upon by the Union, employees with thirty-five and twenty-nine years of service respectively were reinstated after a second Rule 439 violation, although notably those employees had good discipline records. In **CROA&DR 3972**, the prior Rule 439 violation had been seventeen years before and the employee had no demerits since that time. In **CROA&DR 3866** the train had been stopped before the signal and the mistake was found not to be one of inattention or indifference but the manner in which

the locomotives moved in a balky fashion. In addition the employee in that case had twenty-nine years of service without a single rules infraction.

The grievor is a long service employee. However, in determining whether to mitigate the penalty of discharge, in this case there are aggravating factors. One is that the grievor had another Rule 439 violation approximately two years prior to this incident. Like the violation two years before, the facts in the investigation material disclose inattention by the grievor. In addition, in reviewing the grievor's discipline record, it is lengthy and contains multiple Rule violations.

Having considered the facts of this case and the relevant jurisprudence and for the reasons provided, I am not persuaded that the penalty of discharge should be reduced.

Accordingly, the grievance is dismissed.

June 11, 2015



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MARILYN SILVERMAN  
ARBITRATOR