

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4411-B

Heard in Montreal, June 11, 2015

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the assessment of discipline of fifteen demerit marks for his violation of CROR 114 (b) (iii) while working as a Locomotive Engineer on train Q10721-23 on June 25, 2013, resulting in WM1 west end switch run through, Transcona Yard.

COMPANY'S EXPARTE STATEMENT OF ISSUE:

On June 25, 2013 LE Foreman worked Train Q10721-23. While operating his train, Mr. Foreman was required to yard a portion of his train at Transcona Yard. The next train to pass over the WM1 switch after Mr. Foreman's movement, found that the switch had been run-through, and the Company concluded that the evidence demonstrated, on a balance of probabilities, that it was the grievor who had run-through the switch.

The Company conducted an investigation of the incident and determined that Mr. Foreman have violated the Rule noted, and was deserving of the discipline of fifteen demerit marks.

The Union contends that the discipline was unwarranted under the circumstances, and requested that it be expunged from his record.

The Company disagrees with the Union's contentions.

FOR THE UNION:
(SGD.)

FOR THE COMPANY:
(SGD.) J. Shields
Manager Labour Relations

There appeared on behalf of the Company:

K. Morris	– Senior Manager Labour Relations, Edmonton
D. Brodie	– Manager Labour Relations, Edmonton
L. Fredericks	– Trainmaster, Toronto
D. Crossan	– Manager Labour Relations, Prince George

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
B. Willows	– General Chairperson, Edmonton
B. Ermet	– Senior Vice General Chairperson, Edmonton

B. Barr – Local Representative, Vancouver
B. Foreman – Grievor, Winnipeg

AWARD OF THE ARBITRATOR

1. The issue in this case is whether the Grievor's action resulted in damage to the WM1 switch in Transcona.

2. During a tour of duty on June 25, 2013, the Grievor was working as a Locomotive Engineer on train Q10721-23 operating from Sioux Lookout to Winnipeg in a westward direction. In order to complete the set off of cars at Transcona, the Grievor operated his train from the mainline track into Transcona yard by pulling into track WM08. Conductor Biggs detrained from the Locomotive consist. The Grievor pulled the train through track WM08 down the west lead. The Conductor proceeded to make the cut (uncouple) the cars that would be left in track WM08. The train was then operated back on the mainline and on to Symington, which was the final destination yard for the Grievor's train, Q107. The Grievor was on the locomotive consist by himself when the WM01 switch was occupied by his train. The time reported by the Grievor to perform the set off at Transcona was from 02:35 hrs to 03:05 hrs.

3. Approximately two hours later (05:10 hrs), the crew on train Q115 approached the WM01 switch and attempted to line the switch for through movement from the westend lead (the same direction the Grievor had travelled). The switch points were not lined for their movement, but for the backlead. When the crew attempted to line the switch for proper routing they determined that the WM01 switch had been damaged and could not be lined correctly.

4. The Company investigated. The video download from the Grievor's locomotive was not conclusive as to whether the Grievor had run through the switch. The investigation showed that the switch had been run through from the lead track, in a trailing point move, which was the direction the Grievor had travelled when he left the Transcona yard several hours earlier. The Company's investigation also determined that the Grievor's train was the last one to use the switch prior to the crew on train Q115 reporting the damage to the switch. There were no yard engines on duty in Transcona yard during the period between the Grievor's use of the switch and the next use by the crew of train Q115 (03:05 to 05:10). There were also no mechanical department trackmobiles in operation in Transcona yard during that period.

5. The Company concluded, likely what occurred was, that the Grievor's train did not have right of way over the switch, and that the Grievor proceeded despite the switch being against him. Instead of alighting from the locomotive and aligning the switch by hand to give him right of way, the Company suggests that the Grievor must have ignored or failed to see the switch signal against him and proceeded. His engine's weight would have been sufficient to force the switch over, damaging it, in a trailing point move.

6. The Union suggests that the Grievor's locomotive could not have run through the switch because had it done so, while he was doing a push-pull test, the back and forth movement of the test would likely have caused his train to derail. The Company disputes this on a short push-pull test such as the Grievor might have done that day.

7. The Company concluded from its investigation that the Grievor's running through the switch is what damaged it. The Grievor was assessed fifteen demerits for violating Canadian Rail Operating Rule (CROR) No. 114 (b) (iii) which requires that crews ensure that switches are properly lined for their movement prior to proceeding.

8. The Grievor's says he believed switch WM01 was lined for the movement of his locomotive when he crossed it. He cannot explain how, if that were the case, his locomotive was the last to cross the switch before it was damaged.

9. Given that there is no other reasonable explanation for how the switch was damaged, like the Company, I conclude, on a balance of the probabilities, that the Grievor's train run-through of the switch is likely what caused it to be damaged and that the Grievor is responsible for that damage. I see no reason to interfere with the Company's assessment of discipline of fifteen demerits, which is within the range of reasonable responses (see **CROA&DR 2775**).

10. The grievance is therefore denied.

July 15, 2015



CHRISTOPHER ALBERTYN
ARBITRATOR