

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

Heard in Montreal, June 11, 2015

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the assessment of discipline of an eight day suspension assessed, effective March 6-13, 2014 for multiple failures to comply with CN form 8960 Section G – train handling procedures and policy while operating as the Locomotive engineer on trains X31441-18 Feb 18, 2014, M313-31-17 Feb 19, 2014, and failing to comply with CROR 33, CROR 14 (L), CN's Train Handling Procedures, CROR General Notice and CROR General Rule A while operating as the locomotive engineer on train Q10331-25 Feb. 26, 2014.

COMPANY'S EXPARTE STATEMENT OF ISSUE:

While working as the LE on Train Q10331-25 from Sioux Lookout to Winnipeg on February 26, 2014, Mr. Foreman's train exceeded the allowable speed at approximately Mileage 211 of the Redditt Subdivision for a period of about three minutes. The alert of this excessive-speed operation resulted in the Company reviewing the locomotive downloads of Mr. Foreman's recent tours of duty and identified other exceptions to the Company's Train Handling Policies

The Company conducted an investigation of the incidents and determined that Mr. Foreman had violated the Policy and Rules noted, and was deserving of the discipline of an eight-day suspension, given that his discipline record stood at fifty-five active demerit marks.

The Union contends that the discipline was unwarranted under the circumstances, and requested that it be expunged from his record as a result of alleged violations of Article 86 (fairness and impartiality) of Agreement 1.2.

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 Company disciplined the Grievor for four separate instances of misconduct, for failing to comply with operational rules. The instances were: aggressive train handling; unnecessary use of the emergency brake; failure to use the locomotive whistle; and excessive train speed. Each of these instances is either challenged or explained by the Union.

2. The aggressive train handling incident involved the following. While operating Train X31441 18 on February 18, 2014 the Grievor experienced a train separation while departing his train from the siding at Hudson, with the knuckle failing on the first car behind his locomotive consist. The Company says this was the result of the Grievor's aggressive use of the throttle. The Company refers to a portion of section G2.3 of its

Train Handling Policy:

Use of Throttle

Use the throttle in a manner that provides gradual slack adjustment while minimizing in-train forces. Make throttle changes one notch at a time. When starting the train, do not move throttle to a higher position until amperage or tractive effort indicator remains steady or decreases. After the train is moving at a speed above 20 MPH, when increasing throttle, pause at least 3 seconds between throttle positions.

3. The Grievor moved the throttle through the different throttle positions much more

rapidly that the policy requires. The Grievor's explanation is that, had he not moved the throttle positions rapidly and accelerated fast, the engine would have got stuck in the snow. There had been extreme snow conditions during February 2014 and his action was precautionary to avoid the train becoming stuck.

4. The evidence shows that the Grievor was travelling at 10 mph when he jerked the throttle to accelerate suddenly. This meant that he was not stationary in the snow, but moving. While the Grievor may have been concerned that the train might get stuck in the snow, that was not an excuse for not complying with the Company's Train Handling Policy. I find that, in this instance, the Grievor breached the operating rule.

5. The unnecessary use of the emergency brake occurred as follows. On the Grievor's tour of duty on February 19, 2014, while operating Train X31331 17, he initiated an emergency brake application (Employee Initiated Emergency) while preparing to take the siding at Richan at Mileage 45.5 of the Redditt Subdivision.

6. The Grievor explains that he used the emergency brake inadvertently, accidentally. The Company is skeptical of this explanation because the locomotive engineer must manually move the emergency brake handle right across. I accept the Grievor's version that he did so by movement of his body in the locomotive engineer's chair, unintentionally.

7. The Union makes the point that disciplining locomotive engineers for using the emergency brake should not be done lightly because doing so might have the effect of

discouraging them from making use of the emergency brake when they need to.

8. The Company's concern is that use of the emergency brake has a potentially harmful impact. When a locomotive Engineer places the entire train into emergency, the train brakes as well as the locomotive brakes are both fully applied simultaneously. Doing this can cause damage or create a safety hazard.

9. I am not persuaded that the Grievor's explanation is reasonable. His use of the emergency brake required him to manually shift it across in front of him. His activating the brake, without justification, is a breach of the operating rules. I find he was therefore properly disciplined for this rule violation.

10. The third incident involved the Grievor's failure to use the locomotive whistle. CRO Rule Rule 14(1) requires use of an engine whistle signal at various distances before public crossings. The download data shows that the Grievor's use of the whistle during his tour of duty on Train Q10331-25 on February 26, 2014 at crossings at Mileages 199.68, 203.78, 205.93, and 214.08 on the Redditt Subdivision, were not compliant with the requirements of the Rule.

11. The Grievor can give no adequate explanation for this failure. He says he was tired at the end of a long shift. I find he ought to have sounded the correct whistle sequence, which he was familiar with, but failed to do so. This incident was properly included in the instances for which he was disciplined.

12. The fourth, speeding incident occurred while the Grievor was working as the Locomotive Engineer on Train Q10331-25 from Sioux Lookout to Winnipeg on February 26, 2014. The Grievor's train exceeded the allowable speed of 60 mph at approximately Mileage 211 of the Redditt Subdivision for a period of about three minutes, reaching 66.7 mph.

13. The Grievor explains he had to go to the washroom. He left his control stand with nobody in the locomotive engineer's chair. The conductor with him, a Conductor Locomotive Operator (CLO), remained in his chair. The CLO assumed control of the console and monitored the train from his own chair while the Grievor was in the washroom. The CLO was under the misapprehension that the speed limit was 65 mph, not 60 mph, and he allowed the train to accelerate as it did. This was because the zone speed sign in the field showed 65 mph. (That sign was removed a day after the investigation into this matter). When the Grievor returned to his seat he realized the train was travelling above the speed limit and he took immediate steps to bring it under the maximum speed limit.

14. The Company claims that the Grievor is responsible for the speed of his train, irrespective of whether he was in the washroom at the time its speed was excessive.

15. I find that the Grievor is responsible for the excessive speed of his train. When he went to the washroom and placed the train in the care of the CLO, he ought to have ensured that the CLO assumed the control stand, and he ought to have made clear to the CLO what was expected during his absence, including what speed he had to

maintain.

16. As a result of these incidents, the Company was justifiably concerned that the Grievor was not fully compliant with the operating rules. The Company therefore had just cause to discipline the Grievor to bring to his notice that he needed to improve the quality of his overall compliance with the operating rules.

17. I find the penalty of 8-days suspension was reasonable and justified in the circumstances.

18. The grievance is therefore denied.

July 21, 2015



CHRISTOPHER ALBERTYN
ARBITRATOR