

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4488

Heard in Edmonton, September 13, 2016

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The discharge of Locomotive Engineer B. Cl  roux for a violation of CROR 439.

JOINT STATEMENT OF ISSUE:

On May 26, 2015, Mr. Cl  roux was employed as a locomotive engineer on train 931 on the Deux-Montagnes subdivision. After stopping at Ste-Doroth  e station, he proceeded after receiving permission from the conductor to depart the station. At Des Praries he encountered a red signal. He placed the train braking system in emergency but was unable to stop before he had passed the red signal.

The Union asserts that the dismissal of Mr. Cl  roux is unwarranted and excessive in the circumstances. The Union submits that there are mitigating factors in this instance including the fact that at the time of the incident Mr. Cl  roux had been employed with CN in excess of twenty-seven years and that his record reflected 0 demerit points.

The Union requests that Mr. Cl  roux be reinstated without loss of seniority or benefits and that he be made whole. In the alternative, the Union requests that the penalty be mitigated as the arbitrator sees fit.

The Company disagrees with the Union's position. With regard to the 439 violation, the Company contends that there is no dispute that the violation occurred. The Company submits that in the present case, the gravity and circumstances of the incident override the mitigating factors.

Given the relevant facts, the Company's position is that the dismissal was warranted in the circumstances.

FOR THE UNION:
(SGD.) R. Caldwell
General Chairman

FOR THE COMPANY:
(SGD.) A. Daigle
Labour Relations Manager

There appeared on behalf of the Company:

A. Daigle	– Labour Relations Manager, Montreal
O. Lavoie	– Manager Labour Relations Manager, Montreal
D. Larouche	– Senior Manager Labour Relations, Montreal

V. Paquet – Labour Relations Manager, Toronto

There appeared on behalf of the Union:

K. Stuebing – Counsel, Caley Wray, Toronto
R. Caldwell – General Chairman, Bancroft
P. Boucher – Vice General Chairman, Belleville
B. Cl  roux – Grievor, Montreal
M. Garafolo – Observer, Montreal

AWARD OF THE ARBITRATOR

This case involves the termination of a very senior railroader, Locomotive Engineer Benoit Cl  roux. At the time of his dismissal he was in his twenty-eighth year of service, twenty-one years of that as a Locomotive Engineer.

There is little dispute as to what happened to precipitate this termination. As the joint statement indicates, as a locomotive engineer controlling a passenger train, he ran his train through a red signal having been unable to stop in time. He then failed to take certain prescribed emergency procedures. It is necessary to review in some detail how it happened to put the discipline in context. It is then necessary to review the grievor's disciplinary record. There are some differences between the parties as to just how deep the analysis should go and to what extent it should influence what is appropriate for this latest and admitted rule violation. The Union advances mitigating circumstances said to justify the substitution of a remedy short of termination, allowing the grievor to continue his career.

The Circumstances on May 26, 2015

Mr. Cl  roux was the assigned locomotive engineer on passenger train route AMT 931 travelling from Central Station in Montreal to St. Eustache Station. The train stopped at stations on the way including Roxboro and Ste-Dorothee. At Ste-Dorothee passengers got on and off the train, the doors closed and the conductor said it was ok to proceed.

The train went through a curve before approaching signal 169. Mr. Benoit was 5 to 10 car lengths away from that signal when he saw it was red. He immediately applied the emergency braking system. However the train was travelling at 51 m.p.h. and unable to stop. A crossing across a golf course was located after the signal, and the train travelled through that crossing and only came to a stop 4 or 5 car lengths further on, a distance of about 6000 feet. This was admittedly a violation of CROR 439 which requires trains to stop 300 feet before a stop signal.

The route in question is operated using Centralized Traffic Control. Fixed signals along the line govern the train's progress. Some signals provide advanced information, or warnings, about upcoming signals that allow the crew to adjust their speed in anticipation of signals further on. When the grievor left Roxboro station the signal in front of him read "Advanced Clear to Stop" which means the train should proceed, but be prepared to stop at the second signal down the line. At the Ste-Dorothee station the signal (163) was set at "Clear to Stop". This means proceed, preparing to stop at the next signal.

The grievor said he did not remember the signal after Roxboro at all, and did not recall whether he told the conductor the information from the signal. He could not therefore recall proceeding under an advanced clear to stop caution. This should have been his first warning that signal 169 would be red. The conductor's evidence is that he had no recollection of receiving information from Mr. Cl  roux of that, or the next continuing signal.

The grievor also said that he was able to see signal 163 as he was moving along platform at Ste-Dorothee and it was clear. He says he looked at it, saw it was green, meaning clear, and communicated that information to his conductor, although without receiving confirmation back. He agreed that he was expecting it to be green, but maintains he was concentrating on the job and that is what he saw. However, when confronted by evidence that the signal system was working properly and in fact showed clear to stop, he conceded that he had not properly identified signal 163.

The Arbitrator is satisfied that the signals were operating correctly and that Mr. Cl  roux failed to pay any sufficient attention to signal 155 out of Roxboro or signal 163 out of Ste-Dorothee.

The Union argues that the grievor inadvertently misread signal 163. As a result, he went up to 51 mph and, when he saw signal 169, was going too fast to stop in time.

The Employer notes two possible ways overshooting this signal could have had disastrous consequences. The golf course crossing is located north of the access point to the Grande Prairie siding so, had a southbound train been on its way and lined up for that siding, it might well have resulted in a head-on collision. Also, the reason signal 169 was red was that a portion of the main line north of the signal was occupied by a track supervisor, using a high rail vehicle. Fortunately, the track supervisor had already left the track. Had he been in the process of leaving the track at the golf course crossing when the train went through, the result could again have been disastrous.

CRO Rule 403.1 sets out what must happen if a train goes through a red signal.

403.1 STOP SIGNAL PASSED WITHOUT AUTHORITY

Whenever any part of a movement passes a block or interlocking signal indicating Stop without authority;

- (i) the portion of the movement which has passed the signal must be protected immediately in the manner as prescribed by Rule 35;
- (ii) an emergency radio call, giving warning of the situation, must be made at once; and
- (iii) the RTC or signalman must be notified as quickly as possible, who will, if necessary, issue instructions.

Rule 35(b) requires a flagman from the crew to immediately go out and give a red flag warning to any approaching trains. Mr. Cl  roux concedes that this was not done. The crew must also immediately activate communications on the emergency radio channel. This provides a warning to all traffic in the area that the train is in a location where it ought not to be, allowing them to take defensive action. The conductor was just opening the door of the vestibule behind Mr. Cl  roux when Mr. Cl  roux applied the

emergency brake. Mr. Cl  roux’s explanation for not activating the emergency channel was as follows:

40.Q. Mr. Cl  roux, did a crew member send an emergency message on the subdivision’s standby channel?

A. No, we didn’t have time. I called the RTC immediately after the emergency brake application.

41.Q. Mr. Cl  roux, what channel was used to contact the RTC?

A. B3.

42.Q. Mr. Cl  roux, why wasn’t the subdivision’s standby channel used to send the emergency message?

A. I had already been in contact with the RTC.

Notifying the RTC is just one of the three emergency procedures called for in the Rules; contacting the RTC is not a substitute for the other two. The explanation the grievor offered for only phoning the RTC was that he initially thought there was a signal error saying “I was asking explanations from RTC in order to find out why the signal dropped in our face that way”.

The Union concedes the seriousness of the matter, saying in the grievance.

We understand that Rule 439 and the respect of a stop signal is a cornerstone rule of train movement, the violation of which is among the most serious of operating infractions. Mr. Cl  roux being a professional locomotive rail roader for more than 27 years is fully aware of this.

But, all mitigating factors considered, it is our opinion that this is not a case in which outright dismissal is warranted.

The grievor’s record is described by his Union in the following terms:

Locomotive Engineer Cl  roux’s discipline history reveals that, although not without blemish, Mr. Cl  roux had recorded several positive periods of service for the Company. With respect to operating rules violations, there are only five separate assessments on his record – two written reprimands, a 10 demerit assessment for a Rule 115 violation in 1998,

a 5 day deferred suspension for a coupling infraction in 2005 and a 90 day suspension. The latter suspension was in respect of proceeding with excessive speed through a cross-over track.

At the time of his termination the grievor's record was clear of any active discipline. He has never before been disciplined for passing a red signal.

CN monitors employee performance in part by spot checking rule compliance. The Union provided evidence that Mr. Cl  roux's test scores between 2008 and 2012 ranged from a low of 98% to several periods of 100%. Tests were not conducted after 2012. Comments from his supervisor included, in 2010 "employee has a good work attitude, works well with the new employees, is committed to his job and has the potential to exceed in the future". In 2011 the comment was "beautiful work attitude, keep up the good job".

The Union argues that there are mitigating factors beyond those referred to above in respect to his length of service and his record. Despite the significance of the incident, there was no damage to persons, property or reputation.

The grievor is forty-seven years old. He began his career as a brakeman, became a conductor two years later and qualified as a locomotive engineer in 1993. He is separated, with shared custody of three children aged twelve, sixteen and eighteen. He provided a letter describing his personal situation. He has been with CN since he was nineteen, knows no other career and is apprehensive about his future for himself and his three children. He attributes his lack of focus to going through a stormy separation

following a twenty year relationship. He maintains that, with the assistance of the EFAP program he has been able to work through his problems and believes he is ready to work again.

The Employer maintains that discharge was warranted in these circumstances and is supported by CROA&DR jurisprudence. It emphasizes that this was not the grievor's first incident involving a commuter passenger train. He is an experienced locomotive engineer familiar with the operating rules and the territory. No unforeseen factors contributed to the grievor's failure to observe the first two signals and being unable to stop at the third. Similarly, nothing unforeseen prevented his complying with the prescribed emergency procedures.

Prior CROA&DR awards, the Employer urges, justify an outright termination in these circumstances. It refers to the following extract from **CROA&DR 2356**, dealing with the predecessor to Rule 439:

“Outright discharge for a violation of Rule 292, generally coupled with other rules violations, is revealed in a relatively limited number of cases (see CROA 474, 681, 745, 1479, 1505, 1677 & 2124 [reduced to a suspension]). In each of the cases involving an imposition of outright discharge by the company there has been some aggravating factor. For example, in CROA 681 and 2124 the employee discharged for passing a stop signal had committed his second offence against the rule. In CROA 745 a locomotive engineer was dismissed where a violation of Rule 292 was found to also involve a violation of Rule G, resulting in a collision and two fatalities. Serious collisions were also involved in CROA 1479 and 1677, while in CROA 1504 the discharge of the locomotive engineer was motivated, in part, by his falsification of an employee statement intended to evade his responsibility. More recently, employers have again used the assessment of suspensions for violations of rule 292 of the UCOR and rule 429 of the CROR (See, e.g., CROA 2126, 2161, & 2267) (emphasis added)

The Union, too refers to this decision, but notes the following comment a couple of paragraphs below:

The grievor is an employee of some seven years' service, whose disciplinary record was clear at the time of the incident. If his actions had involved only the passing the stop signal, and the immediate stopping of his train thereafter, precedent would suggest the assessment of a substantial number of demerits or a suspension to have been an appropriate disciplinary response. ...

The Employer suggests aggravating circumstances here include the fact that this is a second major offence, that it involved not only running the red signal but failing to apply safety precautions thereafter, and involved a passenger train. On that last point the Employer refers to the following comments by Arbitrator Moreau in **CROA&DR 3745**:

It is very significant that the grievor, a GO train locomotive engineer, was responsible for the safe transportation of a number of passengers. It cannot be discounted that there was potential here for a collision with the VIA train which was located in the same block. Fortunately, the VIA train was a safe distance away from where train 936 came to a final emergency stop. An error of this kind could otherwise have had serious repercussions with the real possibility of injuries to the travelling public.

[...]

The grievor's 24 years of service is a mitigating factor which weighs in favour of his reinstatement. His key position of responsibility for passenger safety as a GO train locomotive engineer is, however, of utmost concern. The grievor has, in my view, irreparably damaged the confidence that the Company places in his ability to perform his duties in a safe manner by his actions on November 29, 2008. After considering all the evidence, including his past disciplinary record, I must regrettably uphold the discharge and dismiss the grievance. (emphasis added)

The Union maintains that the Company does not, as a rule, discharge an employee outright from a Rule 439 violation, even for a second occurrence. It too refers to **CROA&DR 2356** (see above). I have considered **CROA&DR 3744**, where a grievor with a record was reinstated following a Rule 439 violation. I have also considered the facts

involving Locomotive Engineer N.B. who was assessed a 90 day suspension for a Rule 439 second offence. I do not however find that case provides support from the Union's argument of discriminatory discipline.

This is a situation where the grievor's long service, combined with his apparent remorse, his personal difficulties at the time combined with the steps taken to overcome these difficulties justify giving the grievor one last chance to show his reliability. He has a significant prior incident on his record and the Employer is right to treat this as a second offence situation. However, his rule compliance record and the fact he had no active demerits at the time of his dismissal still offer hope for his future. The grievor will be reinstated to his former position without compensation or loss of seniority.

October 25, 2016



ANDREW C. L. SIMS
ARBITRATOR