

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4572

Heard in Montreal, July 12, 2017

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of dismissal of Locomotive Engineer W. Shepley of Red Deer, AB, dated August 29, 2016.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

Following an investigation Engineer Shepley was issued dismissed from Company Service with the following explanation; *"Please be advised that you have been dismissed from Company Service for breaching the bond of trust necessary for continued employment with the Company as evidenced by your prior discipline record and the culminating incident of: Proceeding through a stop sign governing movement over the Petroleum Way crossing, resulting in the crossing warning system not being fully activated for at least 20 seconds and the crossing gates/barriers not being in a horizontal position prior to fouling the crossing while working as the Locomotive Engineer on the 200-25 on July 27, 2016. Violation of Rulebook for T&E Employees Section 6, Item 6.5 (e), Section 13, Item 13.3 (f)(g-ii), Section 2, Item 2.2A, 2.2C (v)(vi)(viii)(xii), GOI Section 12, Stop Sign and T&E Safety Rule book CORE rules, rights and responsibilities {bullet points 1,4 and 5}."*

The Union contends the incident as stated is not worthy of the ultimate penalty of dismissal and the Company has failed to provide any evidence necessary to sustain the charges as described on the Form 104. The Union does not accept any assertion that the bond of trust has been broken through the actions of Engineer Shepley. Engineer Shepley was honest and forthright throughout the investigation and took full responsibility for his actions.

The Union further asserts the Company cannot justify the discipline assessed and such a heavy penalty has resulted in a violation of Engineer Shepley's rights as contained in Article 23 of the Collective Agreement and Section 94 of the *Canada Labour Code*.

For all the above reasons, the Union requests that Engineer Shepley's dismissal be removed from his record and that he be reinstated to his former position without loss of seniority or benefits, and made whole for all wages lost, with interest, in relation to the time withheld from

Company service. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

FOR THE UNION:
(SGD.) G. Edwards
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

C. Clark – Assistant Director, Labour Relations, Calgary

And on behalf of the Union:

K. Stuebing – Counsel, Caley Wray, Toronto

G. Edwards – General Chairman, Calgary

T. Doherty – Local Chairman, Red Deer

W. Shepley – Grievor, Red Deer

AWARD OF THE ARBITRATOR

Mr. William Shepley was hired by the Company in April 1987. His employment was subsequently severed in 1992 and he was hired back in 1994. The Grievor was promoted to a Locomotive Engineer position in 2000.

From 1987 until 2015, he was disciplined 19 times for a total of 200 accumulated demerits, most of which were for absenteeism or failure to report to work. Out of those 19 times, three were for safety rules violations worth 10 demerits each: in 1998, 2001 and 2012.

Following the Company's departure from the Brown System in 2015, Mr. Shepley received a 30 days' suspension in September 2015 for leaving equipment on a main track unprotected by a clearance. Mr. Shepley also received a 45 days' suspension in April 2016 for a similar offense (operating his locomotive without authority); the measure is

contested by the Union and has yet to be heard before this Office's Tribunal. Both infractions are considered Cardinal Rule violations¹.

The facts giving rise to the present case are of relative simplicity. On July 27, 2016, Mr. Shepley was working as a Locomotive Engineer alongside Conductor Eric Sandstorm on train 200-25 travelling eastbound from Red Deer to Edmonton. During the course of his assignment, the Grievor's train proceeded through a stop sign at the public crossing located at the West end of Clover Bar yard. This crossing is a busy industrial road used as a main route for gas diesel and oil trucks to access the nearby Suncor facility.

Whereas crossings are equipped with automatic warning devices, trains must stop and let the devices operate for 20 seconds before proceeding. This system is put in place to ensure that road traffic is properly warned of the train's presence and to allow train operators to ensure the crossing is clear.

Trainmaster Adam Smith observed the incident and saw the Grievor's train go through the crossing before the gates were fully lowered, at an horizontal position, and prior to the protections being activated for a full 20 seconds. The Trainmaster confronted Mr. Shepley and Mr. Sandstorm immediately after the incident.

On August 10, 2016, both the Griever and Conductor Sandstorm attended an investigation in regard to the incident. Mr. Shepley explained that due to the stop sign

¹ For instance, see **CROA 3246**

being on the left side of the road, his position in the car made it very difficult for him to see the stop sign until he was just about to go through the crossing. However, he made sure that the crossing was clear, his headlights were on bright, he was blowing the whistle and the bell was going.

Also during the investigation, Conductor Sandstorm, who was riding the lead end of the locomotive and had noticed the stop sign, explained that he only realized that they were not going to stop when the train was located one unit's length before the crossing. He unsuccessfully tried to grab the Grievor's attention by raising his hand.

The Company argues that the Grievor's past safety violations justify termination, as it shows he is unable to operate in a safety sensitive position without endangering himself, his crew and members of the public. The failure to stop at a stop sign and properly secure the crossing is a serious offense which can reasonably be considered a culminating incident.

The Union asserts that the stop sign was not present in the time table instructions and that poor visibility prevented the Grievor from seeing the sign properly. It also contends that Mr. Shepley is a long service employee who had long periods free of safety rules violations and that, moreover, his colleague was not discharged for the incident. Because of these mitigating factors, the Grievor should be reinstated.

General Operating Instructions (GOI) state, in part, that:

SECTION 12

Unless otherwise specified, movements must STOP prior to passing the sign.

Located 500 feet, except where otherwise indicated, from non-interlocked railway crossings at grade, non-interlocked drawbridges, and at other locations where its use is required.

SECTION 13 – PUBLIC CROSSINGS

13.3 PROTECTED CROSSINGS

[...]

(f) At protected crossings, movements must not accelerate by more than 5 MPH unless warning devices are known to have been operating for at least 20 seconds.”

Upon a careful review of the evidence adduced before this Tribunal, and in light of this Office’s jurisprudence, I find that the present circumstances and the mitigating factors did not justify the Grievor’s termination.

The Company has argued that failing to stop at a stop sign (GOI section 12 and 13) is a very serious offense, akin to the failure to respect a stop signal (CRO Rule 439), which is a Cardinal Rule violation².

With all due respect to the contrary opinion, I do not agree. While there are no decisions from this Office regarding the violation of a stop sign, it is an offense that is more comparable to a failure to protect a crossing, such as provided in CRO Rule 103, rather than a CRO Rule 439 violation³. Indeed, as the Union pointed out, stop signs located before a crossing are meant to allow the automatic warning devices to operate

² See **CROA 3866**, for example.

³ It should be noted that CROR rule 103.1 and GOI section 13.3 have very similar wording

long enough. On the other hand, stop signals restrict trains entirely from proceeding as they have no authority to do so.

Failure to properly protect, or pass through, a crossing can have dire consequences, this Office's jurisprudence deems that it is serious offense, albeit not a cardinal one, as I have determined previously in **CROA 4533**. Disciplinary measures for this type of violation vary greatly depending on the circumstances⁴.

During the investigation, the Grievor stated that it was the first time that he was travelling eastward for this assignment and said he was not aware of the presence of a stop sign at this location. Normally, stop signs are highlighted in the time table instructions that are provided to employees for their assignment. However, while the Scotford Subdivision footnotes mention a public crossing at mile 165.82 (Petroleum Way), it does not indicate the presence of a stop sign. While these factors do not exonerate the Grievor, they do colour the facts as less egregious than most cases reviewed by this Office for similar violations⁵.

It must be pointed out that no accident resulted in the Grievor's fault and although he failed to see the stop sign, he had made sure that the crossing was clear on both sides, his headlights were on bright, he was blowing the whistle and the bell was going.

⁴ See **CROA 3994**, where arbitrator Picher deemed that a written reprimand was adequate for having failed to blow the whistle at a public crossing; **CROA 4004**, where the arbitrator confirmed the assessment of a 60 day suspension for failing to manually protect a defective crossing; **CROA 4005**, where the grievor was assessed a six months' suspension for having passed through a crossing at high speed; **CROA 4248**, where arbitrator Schmidt reinstated a grievor for having failed to protect two crossings.

⁵ See footnote 4

Additionally, Conductor Sandstorm, who was hired in 2008, shares responsibility for the incident with the Grievor. When the former saw the stop sign, he should have communicated this information to the latter, as per article 6.5 (e) of the GOI. Had Mr. Sandstorm properly followed this procedure, perhaps the incident could have been avoided altogether. He received a 45 days' suspension for the same rule violations.

The Grievor is a long service employee and while he has a less than desirable disciplinary record, he enjoyed long periods free of safety rules violations, including a more than ten years' period between 2001 and 2012.

Finally, the Grievor took responsibility for the incident, was forthright during the investigation and showed remorse for what happened.

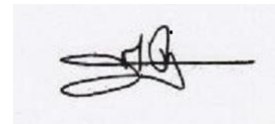
Nevertheless, it must be pointed out that Mr. Shepley's latest suspensions of 2016 and 2015 both involved Cardinal Rule violations.

The Grievor is operating in a safety sensitive position in the railway transportation industry; one that requires a very high level of vigilance and care while carrying its duties. Safety rule violations can have disastrous consequences for CP's employees, the general public and the environment. The importance of safety rules in this context cannot be overstated and the Company's willingness to enforce them must be condoned.

Thus, for the above-mentioned reasons, the grievance is allowed in part. A six months' suspension shall be substituted to the discharge imposed by the Company. The Grievor shall be compensated for all lost seniority, wages and benefits, save for the period of the suspension.

This should be understood by Mr. Shepley as a last chance opportunity for him to show to the Employer that he can operate in strict compliance with the rules applicable in the safety sensitive position of Locomotive Engineer.

July 18, 2017

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'M. Flynn'.

**MAUREEN FLYNN
ARBITRATOR**