

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4583**

Heard in Edmonton, September 14, 2017

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the dismissal assessed to Conductor J. Bujold.

**THE UNION'S EXPARTE STATEMENT OF ISSUE:**

Following an investigation, on September 30, 2016 Conductor Bujold was dismissed from Company service as shown on her Form 104 as follows; *“Be advised that you have been dismissed from company service as you have breached the bond of trust necessary for continued employment with the Company as evidenced by the unauthorized operation of your train into Planned Protection limits between mile 72 and 79 Cartier Subdivision and failing to report the incident as required while working as a Conductor on train 247-05 on September 06th 2016. A violation of the following rules: Canadian Rail Operating Rules (CROR): CROR 34 - Fix Signal Recognition and Compliance, CROR 42 - Planned Protection, CROR 106 - Crew Responsibilities, CROR 102 - Emergency Stop Protection, CROR 142 - Understanding between Crew Members, CROR General Rule C, (I), CROR - General Notice, CROR - General Rule A (i), (iii), (iv), General Operating Instructions (GOI) Section 11 Item 6 Reporting Requirements.*

The Union contends that the assessment of a dismissal in this case to Ms. Bujold is excessive and unwarranted in this matter, it does not meet the process of progressive discipline.

Without question entering the limits of a Rule 42 are very serious but it also must be noted that fortunately no damage or accident took place. The Company will state that they were justified in assessment of dismissal as Ms. Bujold has *“...breached the bond of trust necessary for continued employment with the Company...”* as they believe account she did not report the incident immediately that she had every intention of covering it up. This is absurd as rest assured everyone from the moment the Foreman gave instructions to the crew of 247-05 were made aware of the incident which is further noted in Ms. Bujold's investigation at Q&A 68 to 73. Q&A 68 Ms. Bujold was advised by the Supervisor at Sudbury to park the engines at the fuel stand and go the station and await further instructions, clearly this is that they will be met by Management to be debriefed etc. on the incident. this in fact did happen as the crew were met by Assistant

Superintendent Dave Purdon and Trainmaster Oliver Moloney. Ms. Bujold did not attempt to hide anything at anytime.

Ms. Bujold explained that she made a mistake in what she believed were the limits of the Rule 42 and continued throughout her tour believing this.

The importance of the investigation is to provide an educational process as well as to gather the facts. From this investigation, Ms. Bujold has learned the importance of a thorough job briefing and to keep refreshing any restrictions by referencing her “authorities” throughout the tour of duty.

The Union further believes as noted by the Union representative in the investigation the importance from the facts provided in the investigation process to determine any weaknesses in the current practices, policies or rules. The Union has learned that in the past when Rule 42 planned protection was to take place in the area that this Rule 42 violation took place the Foreman in charge had to place a yellow over red flag out on the Parry Sound sub. In the past, this would be what was stated for the crews to read in their TGBO; *“The form Y for TGBO read as follows; Between mile 72 and Mile 88 Cartier sub, restriction Rule 42 on all main tracks Daily 0500 to 1300. Additional comments; Yellow over Red flag governing westward movement located at mile 119.7 Parry Sound sub. As you can see, the flag placement was included in the GBO and there was a visual barrier that was placed to remind crews that they were entering protected limits. For whatever reason the Company has gotten way from using this flagging procedure, which would have reminded Train crews of the GBO and possibly saved a life had the consequence been more severe. Fortunately, they were not.”*

The Union does not attempt to remove blame for Ms. Bujold but without a doubt there is a mitigating circumstance that could have been prevented this incident had these flags been put into placement. Again, the investigating process is to help stop any future violations by way of education by all parties.

Ms. Bujold at the end of her investigation states the following: *“A92. Yes I do. I am a single mother of 2 and I am very proud to be an employee at CP. My job is my career and my family's livelihood. I'm not taking this incident lightly and I am very thankful that no one was hurt because of our oversight. Not a minute goes by since the incident where I don't think about what could of happened, it haunts me. This was a terrible incident and I can only hope to grow from it and continue a long career with CP.”*

It is clear that Ms. Bujold fully knows the mistake that took place and the severity of it. The Union believes the education that Ms. Bujold has received through this process will make her a better employee in the future and to help educate others.

The Union requests that the grievance be allowed and the discipline removed in its entirety, that Ms. Bujold be reinstated without loss of seniority and benefits, and that she be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and denies the Union's request.

**FOR THE UNION:**  
**(SGD.) W. Apsey**  
**General Chairperson**

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

There appeared on behalf of the Company:

D. Pezzaniti – Manager Labour Relations, Calgary  
S. Oliver – Labour Relations Officer, Calgary

There appeared on behalf of the Union:

M. Church – Counsel, Caley Wray, Toronto  
W. Apsey – General Chairman, Smiths Falls  
J. Campbell – General Chairman, Peterborough  
J. Bujold – Grievor, Mactier

### **AWARD OF THE ARBITRATOR**

The grievor, Conductor Jennifer Bujold, and Locomotive Engineer Michael Maggio were operating train 247-05 on September 6, 2016. A maintenance crew under Foreman Edward Brennan was working on track over which 247-05 would pass. Such maintenance is protected by Rule 42 which provides:

42. Planned Protection

(b) A movement in possession of the Form Y must not proceed beyond the red signal located at the identifiable location stated in the GBO, enter the track limits stated in the GBO, or make a reverse movement within such track limits until instructions have been received from the foreman named in the GBO. When a specific track is to be used, instructions from the foreman must specify the track upon which the instructions apply.

(c) The instructions must be repeated to, and acknowledged by, the foreman named in the GBO before being acted upon.

A GBO, General Bulletin Order, consists of instructions regarding track conditions, restrictions and other information that affect the safety and operation of a movement. A TGBO is a document provided for a specific movement which tabulates the GBO's applicable to that particular run.

Ms. Bujold and Mr. Maggio received the TGBO when they started their run at Mactier, through Sudbury, and then east. It listed Foreman Brennan's protected track, which began just east of Sudbury. The form Y from the TGBO read:

Between mile 72 and mile 88 Cartier sub, restriction Rule 42 on all main tracks Daily 0500 to 1300.

Ms. Bujold and Mr. Maggio briefed themselves when they commenced their duties. However, they both mistakenly mentally recorded the protected area as being from mile 79, the old Via Rail Station, to mile 82. Ms. Bujold reported that she and Locomotive Engineer Maggio believed that the Rule 42 began at mile 79 to 82 on the Cartier Subdivision and that they would only need to speak to Foreman Brennan if they were going to use the crossovers at mile 79.22 to enter the yard. During the run they reminded each other of the GBO, but did not refer to the TGBO they each had on their desks in front of them. Rather, they just repeated their flawed memory that it began at mile 79. Asked why this happened, Ms. Bujold simply said, "I made a mistake".

As their movement approached the protected zone it passed a red flag at mile 72. Neither Ms. Bujold nor Mr. Maggio saw this flag. Her explanation for not seeing this red flag was: "I was looking to the left to see the signal at Ramford. I was not looking into the distance on the right." And further that, at the time:

"I was on the radio trying to get hold of Sudbury train to get yarding instructions."

Locomotive Engineer Maggio's explanation was that:

Q45: ... can you please explain why you did not notice the red flag being displayed at mile 72 on the Cartier Subdivision?

A45: I was standing up to change channels at the time at this location and paying attention to the left where the cantilever was for the signal, not looking across the field for the flag.

Q46: What kind of communication was going on in the cab of the locomotive at this time?

A46: We were switching channels to channel 7 and trying to get a hold of Sudbury Yard for instructions.

Foreman Brennan and his crew were working on the north track just after a crossing at mile 75.47. He had told control to direct Train 247-05 to the south track because his crew was working on the north track. At 9:35 a.m. Mr. Brennan saw the crossing gates close and train 247-05 coming towards them. He immediately radioed them asking if they had received his Rule 42 limits.

On getting the call Locomotive Engineer Maggio applied a full independent break and their movement came to a complete stop within 30 seconds. Before that they had been travelling at about 40 miles per hour and were 3 miles into the protected zone. Mr. Maggio said "Oh shit" and then said they had protection but only from Rule 79. Mr. Brennan said no, it's from Mile 72 – 79, to which Mr. Maggio said "we are in your limits and stopping."

It is from this point on that the parties differ on how events are to be characterized. The Employer's view of what followed is that it was an attempt to cover up the breach, while the Union and the grievors deny that is so. An important part of Ms. Bujold's

grounds for termination is the allegation of failing to report the incident, and the implication this was a deliberate effort to cover it up.

The Rules require that, once a train passes into a Foreman's limits without authority, an emergency broadcast must be made. The crew must also report the violation to the RTC or a Director, or have the Foreman do so. Neither step was taken. Ms. Bujold says, in respect of the need for an Emergency Broadcast, that she panicked and did not think of it. She agrees she did not contact the RTC or a Director or ask Mr. Brennan to do so.

Mr. Maggio agrees that when Mr. Brennan called him he did not perform an emergency radio broadcast "because the emergency was over in the same breath that it happened." Asked why he would think that, he replied, "because we immediately received instructions from Foreman Brennan before we were stopped". He says they got written permission from Foreman Brennan to proceed right after they stopped. Asked why he had not contacted the RTC or the Director to tell them they had violated Rule 42 he answered: "I did not because the Supervisor at Sudbury had called and instructed us to take the unit to the fuel stand and go to the station to await further instructions."

Similarly he replied that he did not ask Foreman Brennan to report the incident because he had given them instructions already and "I thought everyone knew at the time". Both Ms. Bujold and Mr. Maggio accept in retrospect that they should have broadcast the emergency and reported the incident right away. Mr. Maggio said it was

not his intention to be untrustworthy, but at the time he was very shaken up and was feeling sick at the time and not thinking straight.

As to reporting Ms. Bujold replied, "I was under the assumption that everybody was aware because of the change in plans received from Supervisor Lawley in Sudbury." She accepts she should not have made such an assumption.

Weighing the sequence of events and the various explanations, while the crew clearly failed in their broadcast and reporting responsibilities, I am not persuaded that this was in any attempt to cover up what had happened. The assumption that Mr. Brennan and the RTC knew what happened was not unreasonable. New instructions were received right away and clearance given to proceed. Also, the assumption was correct as they were met by managers for testing and briefing at the location to which they were directed.

The Company has established that this crew missed the red flag, violated the protected area by their initial mistake over mile 79, and by failing to recheck the documentation. They also failed to broadcast and report, but, I find, without any intent to deceive or cover up. In fact, and in terms of crew member responsibility, both violated the same rules and are equally culpable.

The question is then – was Ms. Bujold's dismissal excessive? The Employer's position is that it was not, based on the grievor's record and the seriousness of the

offence. Ms. Bujold had been employed for seven years at the point of dismissal. Prior offences were:

2016 14 Suspension CA/Not assigned/14

In connection with your tour of duty on Assignment U51-11 on January 11, 2016, specifically the derailment of 2 empty cars on the west end crossing leading into rip 1 to 4.

2016 30 Other CA/Not assigned/0

This letter will advise and confirm that you have been assessed a thirty (30) day unpaid suspension in connection with your E test failure in accordance with your violation of Policy 4320 the cellular phone policy while on duty on Assignment U54-06 on January 06, 2016. A violation of: General Rule Section 2 item (d) viii. Your suspension will commence Monday March 21, 2016 at 0001 with a return date April 19, 2016 at 2359.

2015 30 Suspension Suspension

Dear Jennifer, Please be advised that you have been assessed with a thirty (30) day uncompensated suspension for violation of CROR 114 and 115(a) while working on assignment U51-25 on October 25, 2015 which resulted in a run thru switch and derailing three cars at the west end of Sudbury yard.

2013 10 Demerits AOR-PTS

For failure to properly inspect URMX 602 threader car before pulling from track rip#1, Sudbury Yard on Friday August 16 at 1705 hrs. resulting in URMX602 threader car arm foul/not secured on south side contacting asset disposal Tamper; while working as Yard Foreperson on Assignment U58YD.

Three of these were in the year prior to this event.

The Employer's position is that a Rule 42 violation, because of its potential for catastrophic consequences is a most serious offence worthy of significant discipline. It refers to **CROA 4250** where Arbitrator Schmidt set aside a Rule 42 violation, but for a grievor with a clear record and twenty-nine years service, compared to Arbitrator Keller in **CROA 3472** said;

Rule 42 is a cardinal rule. Violations of this rule can result in significant danger not only to the train crew but to those working within the limits. That there were none at this time does not exclude the possibility.



He declined to mitigate the termination, but partly due to lack of candour and acceptance of responsibility. Arbitrator Picher in **CROA 3961** held that termination was appropriate for an employee with 45 demerits who violated Rule 42.

The Union advances, as a mitigating factor, that the practice of warning of Rule 42 protection through the use of a Yellow over Red signal had lapsed, but was reinstated right after this incident. As the Union concedes, this does not excuse the error, it is a factor worthy of some consideration. In the Union's submission, the precedents show discipline of upwards of 50 demerits for a Rule 42 event. It argues, based on the following comments by Arbitrator Picher in **CROA 2356**, that outright discharge requires some aggravating factor not present here.

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.

The Union also cites **CROA 2356**, where a grievor with seven years service and a clear record was reinstated, despite other aggravating factors.

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. In light of the aggravating actions pursued by the grievor, it is not inappropriate to view the whole of his actions as deserving of a serious sanction, up to and including a significant period of suspension.

Having weighed all these factors I conclude the penalty of termination would only be justified in this case had the employer established its allegation that the grievor and Mr. Maggio had deliberately failed to report this incident in an effort at cover-up. The evidence convinces me that they did not. However, the incident was a very serious cardinal rule violation involving an incorrect assumption which Ms. Bujold failed to double check against the documentation as well as missing the red flag. Ms. Bujold's record over the prior year was poor. In these circumstances the termination is set aside and the grievor will be reinstated without compensation. She has been remorseful and has accepted full responsibility which convinces me that this is a working relationship that can be successful in the future.

November 24, 2017



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ANDREW C. L. SIMS, Q.C.  
ARBITRATOR