

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4593

Heard in Calgary, November 15, 2017

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal on behalf of Locomotive Engineer R. Cruickshank, of Vancouver, BC concerning the assessment of discharge for Violation of CRO Rule 42 entering Foreman Sehra's limits without authority while working as the Locomotive Engineer on train A41251-20 on January 20, 2017.

THE COMPANY'S EXPARTE STATEMENT OF ISSUE:

On January 20, 2017, the grievor was assigned as the Locomotive Engineer for train A41251-20, when he entered Foreman's Sehra's limits on the Mission Subdivision without authority and in violation of CRO Rule 42.

The grievor attended an investigation on January 23, 2017 regarding the circumstances and events surrounding his assignment on train A41251-20. Following the investigation and given that this was his third Cardinal rule violation Mr. Cruickshank was discharged.

The Union contends that the assessment of discharge was excessive and that the Company did not take into consideration significant mitigating circumstances. The Union requests that the grievor be reinstated into employment, without loss of seniority or loss of wages, or in the alternative, all time out of service to be counted as a suspension.

The Company disagrees with the Union's contentions and has denied the request.

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

**FOR THE COMPANY:
(SGD.) D. Crossan for K. Madigan
Vice-President, Human Resources**

There appeared on behalf of the Company:

B. Kambo	– Manager Labour Relations, Edmonton
K. Morris	– Senior Manager, Labour Relations, Edmonton
D. Crossan	– Manager Labour Relations, Prince George
J. Thompson	– General Manager, Edmonton
J. Reid	– Trainmaster, South Vancouver

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
K.C. James	– General Chairman, Edmonton

M. King	– Senior Vice General Chairman, Edmonton
S. Kopeck	– Local Chairman, Vancouver
J. Bailey	– General Chairman RTC, Edmonton
R. Cruickshank	– Grievor, Vancouver

AWARD OF THE ARBITRATOR

The facts, as stated in the Company's Statement of Issue, although brief, are not in dispute.

Ryan Cruickshank, the Grievor, was hired by the Company on October 11, 2005 and, at the time of the incident, was the Locomotive Engineer in charge. He had been in that position since January 31, 2014. At the time of the incident, the Grievor was 51 years of age and had approximately eleven years of pensionable service.

Prior to his discharge, the Grievor's cumulative discipline record consisted of 35 demerit points and two suspensions.

On January 20, 2017, the Grievor was assigned as Locomotive Engineer for Train A4125-20 from Thornton Yard (Vancouver Terminal). The final destination was North Bend, BC. The train consisted of two engines with 188 cars. Prior to leaving the terminal, the Grievor and conductor worked through their job briefing and went over the paperwork which included restrictions on the DOB's/TGBO's for the applicable territory. Specifically, the Grievor was provided with DOB9700-20 which took effect at 01:00 on January 20, highlighting the restriction on CP's Mission Subdivision between mile zero and SNS Vedder. The restriction consisted of a "*protect against a track foreman's work limits*

between signal 004 mile .04 and signal 14 mile 1.42 for January 20 from 08:30 until 14:00 on CP's Mission Subdivision" (Ex. 6). The "protect against" restriction required that, prior to moving his train into the protected limits under which Foreman Sehra was working, the Grievor was required to contact Foreman Sehra for authority to enter the area. He did not do so.

As reflected by the Company's schematic drawing of relevant portion of CP's Mission Subdivision (Ex. 6), after leaving the CN Subdivision the Grievor's train approached the portion of track, affected by the DOB restriction, from the West. According to the Grievor, there were no yellow over red flags on the portion of the line on which he approached to warn him of the restriction as his train proceeded toward the East. He entered the portion of the track that was under repair and subject to the restriction, and began to cross the Mission Bridge. He entered the protected limits in the middle of the restricted area without contacting Foreman Sehra for authority. At that point, Railway Traffic Control (RTC) contacted the train and instructed the Grievor and the Conductor to stop the train. Immediately thereafter, the Grievor and the Conductor were pulled from service and participated in a post incident A&D assessment. The Conductor tested positive.

As reflected in his interview, the Grievor admitted that he did not contact Foreman Sehra for authority to enter his protected limits because he did not believe that he was actually going through the protected area (Q.14-16). The Grievor agreed that he was in

possession of DOB9700-20 and that it clearly indicated the “*protect against*” limits which were in effect when his train entered the area.

In failing to comply with the DOB restriction, the Grievor was in breach of CRO Rule 42 (Ex. 11). After the completion of the investigation, the Company treated the incident as a culminating one and assessed discipline in the form of discharge based on the seriousness of the incident coupled with the Grievor’s prior discipline history.

The Grievor’s disciplinary history is substantial (Ex. 4), and includes two prior Cardinal Rule infractions. One of which (a breach of CRO 439) occurred on November 13, 2012 when the Grievor pulled across a stop sign, by approximately 10 feet, while he was performing a stretch movement. The Union argues, with some justification, that the infraction was technical in nature. Nevertheless, a Rule 439 violation is serious and is consistently regarded as such. The second Cardinal Rule infraction took place on February 16, 2016, when the Grievor committed another 439 infraction. Although told he would receive a permissive signal, he did not wait to receive it and passed through without authority. He was suspended, in the first instance, for 20 days; and, in the second instance for 275 days. The current infraction took place just over a year following his February 16th suspension.

The Company, (relying on SHP-480) argues that the circumstances of the offence and the previous disciplinary records justifies it in regarding this incident as a culminating one and justifies dismissal.

The Union argues that a number of mitigating factors should be taken into consideration to reduce the penalty. They include:

1. The Conductor on the Grievor's train at the time tested "*non-negative in post-incident testing and was terminated for breach of Rule G*". It argues that, as a result, the Grievor was operating as a one-man crew.
2. That CN and CP Railway neglected to ensure that any flags were placed at the point of entry on the CP Mission Subdivision at a location on which the Grievor's train travelled prior to the limits of Foreman Sehra's protect against area. It argues that had the flags been in place the Grievor would have noticed them and avoided the incident.
3. The Union argues that the copy of the Company's Daily Operating Bulletin (DOB) conveyed to the Grievor (Tab 6) is distinctly different than a CRO Rule 42 generated by the Company in the form of its TGBO's. It argues that the DOB is ambiguous as it does not clearly indicate the direction of travel. In the result the Grievor and his Conductor reached the conclusion that they would not be going through Foreman Sehra's limits and therefore would not be necessary to contact him.

As a result the Union argues, *inter alia*, that the absence of a non-impaired crew mate; the lack of clarity in the DOB; and the lack of appropriate flagging on the portion of track prior to where the Grievor's train entered the restricted area, taken along with the Grievor's acceptance of responsibility and his remorse for the same, are mitigating circumstances which ought to convince me to allow the grievance and change the penalty to one of a suspension.

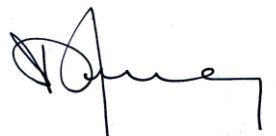
While I have some sympathy for the Grievor, the impairment of his crew mate in of itself does not relieve him of his obligation, as a Locomotive Engineer, to follow all of the

rules, particularly the Cardinal Rules, to the letter. Furthermore, the absence of flags in the circumstances also does not relieve him of responsibility in that he had sufficient experience in taking his locomotive across the Mission Bridge on numerous occasions. The DOB is clear regarding where the restricted area commences and concludes. Given his experience and knowledge he should have been aware, had he read the DOB diligently, of the demarcation points set out therein.

The Locomotive Engineer is wholly responsible for the safe movement of his train and is obligated to follow the application CRO Rules and instructions. The Grievor put himself, and others, in danger when he entered Foreman Sehra's protected limits without authority.

Taking into consideration the above; the gravity of the potential consequences of the Grievor's negligent conduct; and, the fact that this is his third Cardinal Rule violation (the second within a space of two years), I can understand the Company's position that the incident and his past history has resulted in its loss of trust and confidence in the Grievor to follow the accepted Cardinal Rules and conduct himself accordingly.

The grievance is dismissed.



January 22, 2018

RICHARD I. HORNUNG
ARBITRATOR