

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

CASE NO. 4626

Heard in Montreal, April 11, 2018

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the assessment of 20 demerits to Locomotive Engineer B. Norman of Saskatoon, SK, for violating speed restrictions contained in the Canadian Rail Operating Rules and the Subdivision Time Table speed restrictions for trains carrying Special Dangerous Commodities.

THE COMPANY'S EXPARTE STATEMENT OF ISSUE:

On June 27, 2017 the grievor was the Locomotive Engineer on a train carrying Special Dangerous Commodities which failed to adhere to the 35 miles per hour speed restriction between mile 185 and 194 on the Watrous subdivision.

The Union takes the position that the Company's evidence contains discrepancies which cannot prove that the grievor was speeding. The Union also takes the position that even if the grievor was speeding, the discipline assessed was excessive.

The Company disagrees with the Union's position.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

On June 27, 2017 the grievor was the Locomotive Engineer on a train carrying Special Dangerous Commodities which was required to operate at no more than 35 miles per hour between mile 185 and 194 on the Watrous subdivision.

The Company relies on evidence that indicate speeds in excess of 35 mph from mile point 185 to mile point 186.3.

The Union takes the position that the Company's evidence contains discrepancies which cannot prove that the grievor was speeding. Alternatively, if the grievor was speeding, the Company has not considered that Mr. Norman is a long service employee who has not been assessed discipline for a CRO rule involving a moving violation in his career, and as such the discipline is not progressive and is excessive.

The Union asserts that Mr. Norman was denied his collective agreement right to a fair and impartial investigation when the Company elected to wait 36 days until convening the investigation contrary to Article 86.1 of Agreement 1.2, and should be considered void *ab initio*.

The Union also submits that Mr. Norman had been discriminated against when he was singled out for discipline, while Conductor Prokopets was not, contrary to established jurisprudence.

The Union contends that Mr. Norman was denied his right to be present during the examination of a witness whose evidence may have a bearing on his responsibility when it conducted an interview with Conductor Prokopets without notifying Mr. Norman and should therefore render the proceeding as void *ab initio*.

The Company disagrees with the Union's position.

FOR THE UNION:

(SGD.) M. King for **K. C. James**

General Chairman

FOR THE COMPANY:

(SGD.) M. E. Galan for **K. Madigan**

Vice President Human Resources

There appeared on behalf of the Company:

- | | |
|---------------|--|
| S. Roch | – Manager, Labour Relations, Montreal |
| O. Lavoie | – Manager, Labour Relations, Montreal |
| M. Boyer | – Senior Manager, Labour Relations, Montreal |
| C. Michelucci | – Director Labour Relations, Montreal |
| J. Thompson | – General Manager, Montreal |

And on behalf of the Union:

- | | |
|-------------|--|
| A. Stevens | – Counsel, Caley Wray, Toronto |
| M. King | – Senior Vice General Chairman, Edmonton |
| K. C. James | – General Chairman, Edmonton |
| N. Irven | – Local Chairman, Saskatoon |

AWARD OF THE ARBITRATOR

Nature of the case

1. CN assessed 20 demerit points to locomotive engineer (LE) Brent Norman for violating speed restrictions while carrying dangerous goods. The TCRC contested the accuracy of CN's evidence and raised certain procedural issues, including a delay in conducting the investigation interview.
2. For the reasons which follow, the arbitrator dismisses the grievance.

Facts

3. Mr. Norman joined CN in the early 1980's. He works as an LE out of Saskatoon. The June 27, 2017 incident which led to the 20 demerit points occurred as Mr. Norman was returning to Saskatoon with a train carrying dangerous goods.

4. CN places speed restrictions on such trains for obvious reasons. The train's journal alerts the crew to the presence of dangerous goods onboard. Employees are paid for this important journal review. A speed restriction applied for the Saskatoon area; from mile 185 to 194, Mr. Norman's train could not exceed 35 mph.

5. CN received an alert that Mr. Norman's train was travelling over the speed limit when he reached the outskirts of Saskatoon. Mr. Norman was asked to contact CN's ESO (Engine Service Officers) at the end of his trip. Mr. Norman's personal notes contain a handwritten reference to a "call...re: speeding?" (E-1; CN Brief; Tab 13).

6. CN attributed 20 demerit points to Mr. Norman for exceeding the speed restrictions when entering the Saskatoon area.

Analysis and Decision

7. The arbitrator will deal first with the TCRC's procedural objections followed by an analysis of the merits.

Procedural Objections

8. The TCRC raised various procedural objections, including the delay which occurred before CN interviewed Mr. Norman and the lack of discipline for the train's conductor.

9. Discipline for just one member of a train's crew may be discriminatory if both members share responsibility for the incident (U-1; TCRC Brief; Paragraphs 57-60). However, there are two reasons why the objection regarding the conductor must be dismissed.

10. First, CN followed a process for the conductor under the "Partners in Prevention" (PIP) program. The PIP apparently started in 2017 as a pilot program. The TCRC, which also represents conductors but in a separate bargaining unit, is a party to the PIP program with CN. The TCRC (LE) did not persuade the arbitrator that CN's application of the PIP program with the TCRC (conductors) demonstrated discrimination in the penalty. There was no evidence that CN had improperly applied the PIP program, the details of which were scarce at the hearing.

11. CN's application of the PIP program for the conductor differs from situations where this Office has found and overturned discriminatory discipline.

12. Second, the TCRC alleged that CN failed to invite Mr. Norman to the conductor's examination, contrary to article 86.4 of the collective agreement. Article 86.4 states:

86.4 A locomotive engineer and his accredited representative shall have the right to be present during the examination of any witness whose evidence may have a bearing on the locomotive engineer's responsibility to offer rebuttal through the presiding officer by the accredited representative. The Local Chairman and/or the General Chairman to be given a copy of statements of such witness on request.

13. The arbitrator dismisses this related objection on two grounds. First, there is no evidence that the conductor underwent an "examination" as that term is used in article 86.4. The TCRC noted that CN did not interview the conductor (U-1; TCRC Brief; Paragraph 58). Second, there was no evidence that the PIP program produced a written "statement". Article 86 references both an "examination" and "statements" when describing an LE's rights.

14. The arbitrator similarly dismisses the article 86.1 delay objection. Article 86.1 reads:

86.1 A locomotive engineer will not be disciplined or dismissed without having had a fair and impartial hearing and his responsibility established and shall be advised in writing of the decision within 28 calendar days from the date of the locomotive engineer's original statement unless otherwise mutually agreed. If a decision is not rendered within the 28 days the employee will be considered to be exonerated...

15. CN met with Mr. Norman 36 days following the incident. While it would have been preferable to hold the interview sooner, there is no negotiated time delay for

starting the interview. Conversely, the parties have negotiated a delay of 28 calendar days within which discipline must be imposed following the interview.

16. Similarly, Mr. Norman's personal handwritten notes indicate he was aware of the speeding issue. This differs from a situation where an employee had no knowledge of any issues and then is asked about them a significant amount of time later: [CROA&DR 4591](#).

Merits

17. The parties did not dispute the importance of trains respecting speed limits when carrying dangerous goods, particularly in residential areas as was the case here. The dispute instead concerned the sufficiency of CN's evidence.

18. Mr. Norman denied he failed to respect speed limits. The TCRC argued that CN's evidence was confusing. The hours did not match up and in some cases even the minutes did not match up. The arbitrator finds that the difference in hours arises from the lack of a time change in Saskatchewan compared to other parts of the country. Mr. Norman did not suggest that he was over an hour away from the location when the alleged incident occurred.

19. The arbitrator agrees with the TCRC that it is surprising that CN's data from different sources differed in some instances by a few minutes. However, CN explained

that it relied on the train's GPS-equipped Locomotive Event Recorder, the equivalent of an aviation "black box", for its evidence about Mr. Norman's speed and location.

20. On a balance of probabilities, CN demonstrated that Mr. Norman entered mile 185 at 47 mph rather than at the required 35 mph. The train did start to reduce its speed and reached the required 35 mph mark by mile 186.46.

21. The arbitrator is satisfied that CN's imposition of 20 demerit points for this speeding infraction fell within the range of the usual disciplinary responses: [CROA&DR 4053](#). The facts of this case did not give rise to any mitigating factors.

22. The arbitrator dismisses the grievance.

April 25, 2018



GRAHAM J. CLARKE
ARBITRATOR