

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

**CASE NO. 4688**

Heard in Edmonton, June 12, 2019

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the dismissal of Conductor G. Pringle.

**JOINT STATEMENT OF ISSUE:**

Following an investigation, on February 12, 2018 Conductor Pringle was dismissed from Company service as shown in his CP Form 104 as follows,

“Formal investigation was issued to you in connection with the occurrence outlined below:

“In connection with: 439 violation at signal 589W Hamilton Sub when on your tour of duty on January 15, 2018 while working as a Conductor on Train 142-13.

Formal investigation was conducted on January 19, 2018 to develop all the facts and circumstance in connection with the referenced occurrence. At the conclusion of that investigation it was determined the investigation record as a whole contains substantial evidence proving you violated the following; CROR 439 Stop Signal.

This letter will advise and confirm that you have been dismissed from company service effective February 12, 2018”.

The Company unilaterally reinstated Mr. Pringle on May 7, 2018. There was no agreement.

**The Union’s Position**

The Union’s position that the outright dismissal of Conductor Pringle is excessive, and the Company did not look at any of the mitigating factors.

There is no dispute that the crew did pass a stop signal. As provided throughout Mr. Pringle took full responsibility for his actions but did provide that he had not used this actual track very often over the 14 years that he has been qualified on this territory. Although he might be “qualified for 14 years he did not work this subdivision every week of every month. Mr. pringle provided his phone records and was post incident drug/alcohol tested which he passed.

It can be seen from the first contact with these employees and within their statements they truly believed the stop signal was not their signal but that of the other track. A terrible mistake, but a mistake. To ensure no other employees that might face the same circumstances as this crew

and make the same mistake the Company re-issued the bulletin to instruct all to understand what track the signal was for. The Company was in position to discipline Mr. Pringle but an outright dismissal was excessive. The facts of the investigation do not warrant, nor justify this quantum of discipline.

The Union requests that the discipline assessed to Mr. Pringle be removed in its entirety and that he be made whole with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

#### The Company's Position

The Company disagrees and denies the Union's request. The Company viewed this incident involving the Grievor and crewmember proceeding 4000 feet past designated stop signal 589W as an extremely serious rules violation that could have resulted in a catastrophic event. Moreover, the evidence adduced during the grievor's investigation revealed that he was fully qualified on the Hamilton Subdivision where the incident took place and was knowledgeable of the terrain and signalization. All time out of service until the grievor was leniently reinstated by the Company should be viewed as a period of suspension given the gravity of the rule's violation. As such no compensation is warranted under the circumstances.

#### **FOR THE UNION:**

**(SGD.) W. Apsey**

General Chairperson

#### **FOR THE COMPANY:**

**(SGD.) D. E. Guerin**

Senior Director, Labour Relations

There appeared on behalf of the Company:

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|--------------|--|
| D. McGrath   | – Manager Labour Relations, Calgary              |
| D. E. Guerin | – Senior Director, Labour Relations, Calgary     |
| D. Zurbuchen | – Manager, Labour Relations, Calgary             |
| P. Sheemar   | – Observer, Human Resources Coordinator, Calgary |

And on behalf of the Union:

- |              |                                     |
|--------------|-------------------------------------|
| D. Ellickson | – Counsel, Caley Wray, Toronto      |
| W. Apsey     | – General Chairperson, Smiths Falls |

### **AWARD OF THE ARBITRATOR**

There is no dispute on the facts or that discipline was warranted. Only the severity of the suspension imposed is at issue.

On January 15, 2018, while operating train 142-13, Conductor Pringle and his Engineer proceeded passed a designated Stop Signal contrary to CRO Rule 439. Prior to doing so, the crew encountered a Clear to Stop Signal designed to warn them that the next Signal they would encounter would be a Stop Signal.

Both the Grievor and the Engineer observed the Clear to Stop Signal. However, when they encountered it, they assumed - erroneously - that the Stop Signal was intended for another track not pertaining to their movement. Accordingly, they passed through it and proceeded some 4,000 feet along the track when they were contacted by the RTC. The RTC became concerned of their whereabouts after the controller received a prompt indicating that the Stop Signal was passed without authority. The crew then realized that they had proceeded through the Stop Signal and violated Rule 439.

Following an investigation, the Grievor was dismissed from service, on January 15, 2018, for a violation of Cardinal Rule 439. He was subsequently reinstated into service on May 3, 2018 with his record reflecting an 81-day unpaid suspension.

The Union argues that the dismissal represents an overreaction by the Company and that the 81-day unpaid suspension was unduly punitive and unwarranted in light of his lengthy service and positive disciplinary record. (At the time of the incident, the Grievor had no active demerits on his record). In mitigation, it points to the fact that the day following the incident the Company posted an Operating Bulletin (Union Exhibits; Tab 5) to advise train and engine employees that:

“Signal 589 W at Main, located west of the west track, governs northward movement on the west track”.

The Union asserts that the bulletin represents an admission by the Company that the Stop Signal at issue was confusing and required clarification. The Company responds that it was merely an administrative practise to ensure future compliance. In addition, the

Union points to the Grievor's candor and responsibility as well as his true remorse for the incident.

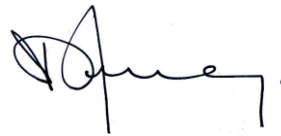
While the Company acknowledges the Grievor's candor and responsibility, it points out that the Grievor's train travelled 4,000 feet down a busy portion of the rail line that, an hour later, would have had passengers on the GO Train headed in its direction. It asserts that the gravity of the breach of Rule 439 is exacerbated by the Grievor's failure to give appropriate consideration to the initial Clear to Stop Signal which required him to prepare for an imminent full stop.

I am unable to agree that a lesser penalty is appropriate in the circumstances here. In deciding as I do, I take into consideration the fact that both crew members recognized the Clear to Stop Signal and knew or ought to have known that there was a Stop Signal coming. While there may have been some confusion on their part (based on the photographs at Union Exhibit; Tab 5), they nevertheless chose to proceed through the Stop Signal thereby effectively ignoring the previous Clear to Stop Signal which they encountered and understood. They acknowledged and discussed the Clear to Stop Signal. It was meant to warn them that the next signal they encountered could be a Stop Signal. If they were uncertain whether the next Stop Signal they encountered was for them, they ought to have taken appropriate action by either stopping the train or calling the RTC to get clarification. In fact, the Grievor allowed that, in the future, that is what he would do if confronted by the same circumstances.

As pointed out in **CROA 2356**, suspensions relating to train movements proceeding through a Stop Signal vary between 45 days and 9 months. A violation of Rule 439 is, arguably, the most critical Cardinal Rule (**CROA 4247**). Recently, in **CROA 4610**, Arbitrator Clarke imposed a 60-day suspension for a 439 violation where the Grievor recognized his own error and stopped the train 100 feet beyond the Stop Signal. Those circumstances pale in comparison to the present case where, even leaving aside their possible confusion over the Stop Signal, the Grievor and his crew went through it for some 4,000 feet down the track without recognizing they had done so until contacted by the RTC.

In the circumstances, I am unable to alter the penalty imposed. The grievance is dismissed.

July 4, 2019



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RICHARD I. HORNUNG  
ARBITRATOR