

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

**CASE NO. 4833**

Heard in Edmonton, June 21, 2023

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal on behalf of Locomotive Engineer Ashley Chater of Saskatoon, SK, concerning the assessment of forty-five (45) demerit points for “violation of CROR 439 by going past signal indicating STOP at Signal 488N at Kelliher (MP 48.8) on the Watrous Sub while operating the Q11251-15 on November 17, 2019.” This resulted in her discharge from service for accumulation of 100 demerits.

**JOINT STATEMENT OF ISSUE:**

On November 17, 2019 the grievor was called as the Locomotive Engineer on train Q11251-15, Saskatoon to Melville on the Watrous subdivision. The grievor was operating in dense fog on double track between Leross and Jasmin. The grievor acknowledged an advanced clear to stop, and a clear to stop to Kelliher, reducing her train speed to 17 mph. However, due to the dense fog, the grievor only identified a signal indicating stop at 500 feet from the control signal at Kelliher where she applied the train brake, then placed the train into emergency but was unable to stop her train prior to passing a stop signal. The train went by the stop signal by approximately 20 feet, resulting in a CROR 439 violation.

The grievor was required to attend a formal investigation on December 02, 2019, resulting in the demerits and termination of employment effective December 06, 2019.

The Union’s position is that the assessment of demerits resulting in termination is excessive and unjust given the mitigating factors, and requests that the grievor is returned to service without loss of seniority, and that she be made whole for all lost wages and benefits. The Union requests that the ultimate penalty of discharge be substituted with a process which includes an educational component to address any shortcomings in the grievor’s abilities, or in the alternative that the discipline be reduced or modified significantly to allow the grievor to be reinstated.

The Company disagrees with the Union’s contentions and denied the request as the grievor was culpable for her actions and disciplined accordingly. The Company cites the grievor’s lack of attention to the signal system, her disregard for the rules and safety, as well as failing to ensure the safe passage of her train in full compliance with the rules.

**FOR THE UNION:**

**(SGD.) T. Russet** (for) **K. James**  
General Chairperson, TCRC-LE-W

**FOR THE COMPANY:**

**(SGD.) D. Houle** (for) **D. Klein**  
Senior VP Human Resources

There appeared on behalf of the Company:

- L. Dodd – Manager, Labour Relations, Montreal
- F. Daignault – Director, Labour Relations, Montreal
- A. Hernandez Gutierrez – Labour Relations Associate, Edmonton
- S. Grewal – Senior Manager, Engine Service, Labour Relations, Edmonton

And on behalf of the Union:

- K. Stuebing – Counsel, Caley Wray, Toronto
- K. C. James – General Chairperson, Edmonton
- P. Boucher – President, TCRC, Ottawa
- C. Gesbrecht – Local Chairperson, Saskatoon
- T. Russett – Senior Vice General Chairperson, Edmonton
- A. Chater – Grievor, Saskatoon

## **AWARD OF THE ARBITRATOR**

### **I - Introduction**

- [1] The Grievor has been employed by the Company as a Locomotive Engineer for the past five and a half (5.5) years and as a Conductor for four years prior to that. She has worked out of the Saskatoon Terminal for the entirety of her nine and half (9.5) year career.
- [2] On November 17, 2019, the Grievor was operating train Q11251-5 on the Watrous subdivision. This was a 10,000-foot, 10,000-ton train. The Grievor failed to bring her train to a stop 300 feet back from a “Stop” sign at Kelliher. The train was ultimately brought to a stop approximately 20 feet *past* the “stop” signal.
- [3] It is not disputed this was a violation of Rule 439.
- [4] The Grievor was assessed 45 demerits (3/4 of the way to dismissal under the Brown System). The Union grieved that assessment.
- [5] In this case, the JSI says the Grievor failed to see the “stop” signal until it was approximately 500 feet away. The parties have agreed to certain other facts in the JSI:
  - a. the Grievor acknowledged the two signals prior to the “stop” signal;
  - b. the Grievor was operating in a “dense fog”;
  - c. the dense fog had an impact on the Grievor’s ability to bring her train to a stop;

- d. the Grievor violated Rule 439; and
- e. the train stopped half of a train car length *past* the signal.

The Grievor's Demerit Status

- [6] This is the Grievor's second Rule 439 violation in two years.
- [7] In November of 2017, the Grievor had an incident where she failed to appropriately forward plan and did not bring her train to a controlled stop at a "stop" signal. The Grievor was assessed 20 demerits for this violation.
- [8] The addition of the 45 demerits at issue in this Grievance to the Grievor's disciplinary record (which included the 20 demerits from the 2017 incident) pushed the Grievor to 100 demerits and she was discharged for accumulation.
- [9] Due to reductions in discipline, the Grievor's record was subsequently reduced to 80 demerits, which still resulted in discharge under the Brown System.
- [10] The Union grieved the assessment of the 20 demerits from the 2017 incident, as well as this assessment of 45 demerits. Both grievances were heard on June 21, 2023 by this CROA Arbitrator. Both decisions are being released at the same time (CROA 4832 for the 2017 violation and CROA 4833 for this 2019 violation).
- [11] In **CROA 4832**, the Grievor was found to have been "chasing the signals" and anticipating a "proceed" signal. The assessment of 20 demerits was upheld.
- [12] The result of **CROA 4832** is that the Grievor's disciplinary record stands at 55 demerits *before* the impact of the assessment of the 45 demerits for this 2019 incident. The practical result is that - unless the discipline in this case is reduced to less than five demerits for this Rule 439 violation, or unless a suspension is substituted for the use of demerits (with or without remedial training) as argued by the Union to be appropriate - the Grievor will still remain subject to discharge for accumulation of demerits, *even if* her demerits are substantially reduced.
- [13] For the reasons which follow, I do not consider it would be an appropriate exercise of my discretion to "convert" the demerits to a suspension for the purpose of preserving the Grievor's employment. While I find that an assessment of 45 demerits

was excessive in all of the circumstances, I am prepared to exercise my discretion to reduce those demerits to 30 for this second Rule 439 event.

- [14] Adding 30 demerits to her existing 55 demerits, leaves the Grievor at 85 demerits. The Grievor's discharge for accumulation of demerits is therefore upheld.

## **II – Background Facts**

- [15] Certain background facts noted in **CROA 4832** bear repeating:

The railway industry is one of the most highly safety-sensitive industries in this country. The railways carry various goods across the country. Some of the goods are hazardous, including chemicals and petroleum products. The Company's trains pass through and around populated areas and near major highways.

To ensure the safe operation of its business, the Company is not only governed by its own internal safety rules, but by government legislation and rules which apply to all railways, which are known as the Canadian Railway Operating Rules (CROR). Following rules which support the safe operation of trains in this industry is critical.

I accept that a Locomotive Engineer - as the operator of a train - must shoulder considerable responsibility for ensuring the safe operation of a train. Part of that responsibility includes understanding all of the safety rules, as well as being willing to handle a train in a manner which contributes to its safe passage.

A train is braked by both Dynamic Braking (which brakes the locomotive alone) and air brakes (which can apply a braking force to the individual railcars). The Dynamic Braking system (DB) has various levels, ranging from DB1 (which is the lightest braking force) to DB8 (which is the heaviest braking force). A key role of a Locomotive Engineer is in understanding and using both systems to control a train.

Placing a train into "emergency" is a last resort for stopping a train. The DB and train brakes are applied simultaneously, creating safety hazards associated with the resulting excessive braking forces.

The subdivision in which the Grievor was operating is controlled by Centralized Traffic Control (CTC). This is a system of signal lights that authorize and coordinate train movements and control the flow of traffic. This system allows trains traveling in the same direction and in different directions to use the same rail lines, and to meet and pass each other through the use of sidings.

An understanding of – and willingness to obey - the CTC system is a key aspect of a Locomotive Engineer's role.

As heavy freight trains need considerable time to come to a complete stop, the CTC system provides warnings to Locomotive Engineers miles in advance of an upcoming stop signal. This is done through a series of advance signals to the Locomotive Engineer prior to a the actual "stop"

signal. These warning signals provide time to an Engineer to plan to bring a train to a controlled stop by applying appropriate braking forces.

[16] “Stop” signals are governed by CROR Rule 439. That Rule states:

439. Stop

Stop-Stop. Unless required to clear a switch, crossing, controlled location, or spotting passenger equipment on station platforms, a movement not authorized by Rule 564 must stop at least 300 feet in advance of the STOP signal.

[This Rule also has a picture of a “Stop” signal]

[17] Whether a train needs to come to a stop because people are on the track, or to allow an oncoming train into a siding, as noted in **CROA 4832**, “[a] “Stop” signal provides “protection” to whatever is on the other side of it.”

[18] Other facts specific to this incident – including the braking forces applied by the Grievor and the impact of the fog – will be noted in the “Analysis” section of these reasons.

[19] In the JSI, the parties have admitted there was a violation of Rule 439. Where the parties disagree is the level of discipline.

### **III - Arguments**

[20] The Company focused on the nature of the incident as being a very serious infraction in this industry and the discipline record of the Grievor. It argued that forward planning was a crucial aspect of an engineer’s role and that the Grievor had “multiple” train handling violations. It argued that - for the second time in two years, the Grievor had failed to plan a controlled stop, which justified its disciplinary decision. It argued that understanding signals is critical, and that Rule 439 was one of the most important signals in a highly safety-sensitive industry and is considered a “cardinal rule” in this industry and a Life Critical Rule at the Company.

[21] The Company argued that if the Grievor’s visibility was “significantly impeded” as argued by the Union, she should have adjusted her train handling and speed to those conditions. It also noted it was only “sheer luck” that a more serious incident did not occur, as the Grievor was 320 feet past where she was supposed to be

stopped. The Company argued it was aggravating that the Grievor had the track profile and tools available to tell her where her train was, which she should have used in the fog, rather than her sight, as well as the signals themselves.

- [22] The Company also argued the Grievor was not disciplined for placing her train into emergency in 2017, but for failure to forward plan appropriately and violating Form 8960. It was the Company's position demerits were appropriately used as a discipline measure for Rule 439 violations and have been long-issued for this type of violation. The Company maintained the Grievor's repeated serious safety violations and increasingly serious violations make her employment untenable. It noted the Grievor was dismissed for demerits that were already on her record, from previous transgressions and that many of those demerits were undisputed. It argued the Union's cases were distinguishable.
- [23] For its part, the Union argued the demerits and ultimate dismissal was excessive and unwarranted and far too severe. It urged the "chilling" effect of the discipline addressed in CROA 4832 should be a "significant consideration" as the Grievor hesitated in putting her train in emergency because of those active demerits on her record. It noted the Grievor was forthright and honest and openly acknowledged her error and her regret. It also noted the Grievor's movement was never in any danger of encountering another train or equipment.
- [24] The Union argued the Company had other alternatives besides demerits to discipline the Grievor. It argued that a lengthy suspension of 30 to 90 days was the standard for Rule 439 violations in this industry. It argued the Grievor's case should fall towards the lower end of that suspension range, given mitigating circumstances and the "miniscule degree" her movement went by the signal.
- [25] It was the Union's position there were no aggravating factors or any "wilful derogation from safety-critical duties" on the Grievor's part; there was no pattern or escalation in seriousness in the Grievor's actions and that this was the Grievor's first cardinal rule violation, which should not have attracted such a severe penalty. It noted the Company's cases were distinguishable.

## **IV - Analysis and Decision**

### **The Wm. Scott Factors**

- [26] At issue in this case is the reasonableness of the discipline. This triggers the application of the second and third questions in *Re Wm. Scott & Co.* [1976] B.C.L.R.B.D. 98, which are: Was discipline excessive? and - if so - what discipline should be substituted as a just and reasonable response?
- [27] There are a number of factors to be considered to determine this question. These factors can be aggravating, or mitigating for discipline, or they can have a neutral impact.
- [28] The factors include the nature of the offence; the disciplinary record of the grievor; circumstances negating intent; provocation; financial impact; whether the violation was part of a pattern of behaviour or an isolated incident; whether the grievor has shown remorse; and whether the grievor was honest or tried to cover up the violation. The list is not closed and an arbitrator has a broad discretion to consider any factor she considers relevant.
- [29] A heavy freight train needs considerable time to come to a stop. The CTC provides two advanced signals before a stop signal, to allow a locomotive engineer time to plan to bring a heavy train to a stop.
- [30] *Both* signals give important information to an engineer that a stop is upcoming, to provide the needed time to manage the train's speed and bring it to a controlled stop.
- [31] I accept that having spent her entire career working out the Saskatoon Terminal, the Grievor was familiar with the track profile and signal locations on the Watrous Subdivision.

### **The Grievor's Explanation**

- [32] When asked to provide her account of the incident, the Grievor stated:

I was approaching the signal preparing to stop. We had called the approach signal, I was in dynamic slowing my train down looking for the "mile to" board continuing in dynamic brakes and lost track in the fog of where we were. The

light came out of the fog, tried to bring my train to a stop as per the rules but we were too close so I plugged it. It was not enough and we went 20 feet past (Q/A 26).

[33] The difficulty with the Grievor's explanation is that there are several actions which she took which are confusing and contradictory. The first is her application of the brakes on this train. These braking forces can be seen on a breakdown of the locomotive event data:

- a. The Grievor encountered an Advanced Clear to Stop signal at mile 51.91. This signal told the Grievor that at the *second* signal, she would encounter a "stop" signal.
- b. This "stop" would be at mile 48.8, which was approximately three miles away. At that point in time, the train was travelling at 45 miles per hour (mph).
- c. Although there was dense fog, the Grievor did not set any locomotive measuring device at this point.
- d. Two and one half minutes later, the Grievor encountered a "Clear to Stop" signal at mile 50.2. This signal indicated to the Grievor that the *next* signal would be a "stop" signal. That stop signal was a further 1.8 miles down that track, at that point.
- e. The Grievor did not set any locomotive measuring device at this point.
- f. Also at this point, the train was halfway over a "hog back", which is where the head of the train is going down a hill and the back half of the trail was still coming up that hill. At this point, the train was traveling at 29 mph.
- g. Unexpectedly *and without any later explanation*, the Grievor "let up" the brake from DB8 to DB7, which lessened the braking application on the train. This is confusing because at this point, the train was *descending*, with the force of the train naturally acting to *increase* speed.
- h. At this point, the train was traveling 22 mph so the braking action of the Grievor was having *some* impact.
- i. At mile 49.24, when the train was *less than 1/2 mile from the Stop signal* the train was still traveling at 19 mph. *The Grievor lessened the brake again to DB5.*



- j. The Grievor offered no explanation for why she would be *lessening* the dynamic braking after she had passed the last signal and knew she was approaching a stop signal.
- k. At mile 49.24, 40 seconds later, with the train still traveling at 17 mph and now moving on a fully descending grade, the Grievor then applied DB8.

[34] Considering first the nature of the offence, it was noted in **CROA 2356**, that this Office considers violations of what is now Rule 439 to be “serious offences”. The nature of this event as a serious and significant event is an aggravating factor for discipline.

[35] Jurisprudence has limited value in assessing the second question of the *Wm. Scott* analysis, as each case must depend on its own facts. The Union relied on **CROA 2356**. In that case, a train proceeded past a signal by four car lengths. The arbitrator discussed the situation where “outright discharge” would be appropriate, noting that there would need to be “some aggravating factor”. The arbitrator noted that in **CROA 681** and **2124**, the employee was discharged as it was a “second offence against the rule”.

[36] This case is also the “second offence against the rule”.

[37] **CROA 4250** was also relied on by the Union. That case addresses operating without the proper authority, and not a failure to stop at a signal.

[38] **CROA 4583** relates to passing into a Foreman’s limits without authority and termination, which is also distinguishable.

[39] **CROA 4495** is an “outright termination” case as well which is distinguishable.

[40] **CROA 4563** addressed the situation of a fourteen (14) year employee who was terminated following a rear end collision and is distinguishable.

[41] In **CROA 3744**, the Grievor had nineteen (19) years of experience which was a significant mitigating factor. He recognized his error and committed to paying attention in future. The Grievor was reinstated. That case is distinguishable. This Grievor is not a long-service employee. In this case, the Grievor committed to paying attention in 2017 to ensure she appropriately planned her stops and yet had a

second offence for the same violation. In this case, there is reason to question the Grievor's commitment to paying close attention in future.

- [42] The Grievor's explanation for not bringing her train to a controlled stop *before* the signal, was that she became disoriented in the dense fog, missed identifying the "advance" board and lost track of her location. The Union noted that by the time the "stop" signal came into view, the Grievor was only 507 feet from the signal. While she had been able to slow her train considerably to 17 mph in DB5, she then went right to DB8 and attempted to set a heavy automatic brake. As she realized this would not stop her train in time, she placed her train into emergency.
- [43] While the fog was one factor in this event, I cannot agree that it is as significant a mitigating factor as was argued by the Union.
- [44] The Grievor's actions in *lessening* braking actions at a time when she knew she was approaching the signal and should have been *maintaining or increasing* braking actions was a factor in this event. The fog does not explain *these* actions. I further agree with the Company that the Grievor should not have been depending only on sight when there was a dense fog. The train was equipped with tools that the Grievor failed to use that would have assisted her in orienting herself. While she stated she was looking for the "mile to" board, there was a need for an exercise of judgment that this board may be difficult to find in the fog and another point should be used. . Further, the fog did not come up unexpectedly or cause an unanticipated issue.
- [45] Even in the fog, the Grievor *acknowledged* she saw the advanced signals that told her a "stop" signal was expected.
- [46] Turning to the disciplinary record of the Grievor, it must be recalled that the Grievor's previous incident two years earlier involved the *same* type of violation. **CROA 4832** determined that an assessment of 20 demerits was a reasonable – and even lenient – response for that violation.
- [47] It is the "progression" of discipline that is meant to teach. When there is a repeat of an earlier offence, that is a significant factor, as that indicates the *earlier* discipline may have failed to do that work and a progression of discipline is therefore required.

- [48] The Union had argued the previous discipline had a “chilling” effect. I cannot agree. I accept that discipline *should* cause a grievor to think carefully about what they are doing in future, but I do not agree that this is “chilling”. Rather, as this is a *second* offence of the same nature as that committed two years earlier, that fact is aggravating.
- [49] The Union also noted the Grievor was honest and forthright. In this case, it would not have been possible to cover up the fact that a large locomotive was sitting halfway in advance of a “stop” signal; a fact which was known not just by the Grievor but by the balance of the crew as well.
- [50] The Union argued the Grievor stopped a “mere” 20 feet past the signal and that this was a “miniscule amount”.
- [51] I cannot agree with the Union’s position that a locomotive which is not stopped until 20 feet *beyond* a signal is only over by a “miniscule” amount and this should be mitigating. I accept that the concept of degree in exceeding a signal does not make logical sense in view of the impact which can occur when a signal is “blown” by *any* amount. I agree with the Company that that obeying the signals is critical for safety; that disobeying such signals has potentially catastrophic consequences and that failing to stop at a “stop” signal is a serious and significant violation in this industry.
- [52] Further, the Grievor did not only exceed the signal by 20 feet, *but by 320 feet*. If an individual had been working in that 320 feet, or there had been equipment on the track in that 320 feet, it would not have mattered that the Grievor only exceeded the actual signal by 20 feet. The Grievor was very fortunate in this case that there was nothing on the track when she pulled past the “stop” signal.
- [53] I agree with the Company that this was not an “outright discharge” as argued by the Union. The Grievor’s position was precarious due to the impact of her earlier discipline and it was the impact of her previous behaviour that resulted in the accumulation which led to her discharge. That result does not fall on the Company, but the Grievor. While the Company was aware of the Grievor’s record and of the impact of its discipline, it does not bear responsibility for the fact that discharge occurred.

- [54] Turning to the Grievor's position that a lengthy suspension rather than discipline would be appropriate, I cannot agree with this conclusion. The Union has offered no justification for an exercise of this discretion, other than that it would be a discipline response that would not result in the Grievor's discharge. For its part, the Company argued it no longer has trust in the Grievor to perform the duties of a Locomotive Engineer.
- [55] I do not consider it would be an appropriate exercise of my discretion to interfere with the underlying decision of *how* the Company chooses to discipline the Grievor by imposing a suspension *instead of* demerits, in order to protect the Grievor from the consequences of the Brown System. The Company was not obliged to choose the method of discipline that would result in the Grievor being able to maintain her employment, or to effectively protect her from the impact of the accumulation of demerits due to her own poor disciplinary record by imposing a suspension. In fact, it could be argued that type of logic would be counter-productive to the purpose of discipline, which is to progressively increase the penalties to encourage a change in behaviour.
- [56] I am satisfied that the Company's choice of assigning demerits to the Grievor was a reasonable one for this second offence and justified on the jurisprudence.
- [57] The Union has urged that the Grievor could also be subject to extra training, to address her shortcomings in train handling. I do not consider this to be a reasonable exercise of my discretion, on the facts of this case. The Grievor is not a "newly qualified" Locomotive Engineer such that she perhaps needs further experience or instruction to improve her train handling skills. The Grievor has been a qualified Locomotive Engineer for over five years. That is a sufficient length of time for the Grievor to have demonstrated that she can manage the tasks which are inherent in the role of a Locomotive Engineer. She has now twice demonstrated she cannot.
- [58] However, I do agree that the imposition of 45 demerits is an excessive response. That response is more than double what was given by the Company for the first offence, which in my view was more egregious as the Grievor was "chasing signals" and there was no mitigating factor of the impact of the fog. Considering all of the

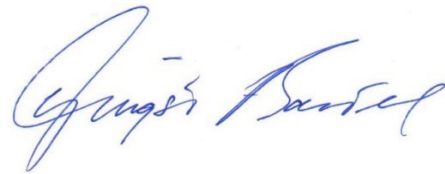
factors as noted above, I consider that a reasonable assessment of progressive discipline on the facts of this case would be 30 demerits. Under the Brown System, that impact – if standing alone on a record – would take an employee half way to discharge, and takes account of the fog, which the parties have agreed impacted this Grievor's ability to stop the train.

**V - Conclusion**

[59] The Grievance is allowed in part. An assessment of 30 demerits is substituted for the Company's assessment of 45 demerits. However, the resulting discharge for to accumulation of demerits is upheld.

[60] I remain seized to address any questions regarding the implementation of this Award and to correct any errors or omissions to give it its intended effect.

August 21, 2023



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**CHERYL YINGST BARTEL  
ARBITRATOR**