

IN THE MATTER OF AN ARBITRATION

B E T W E E N:

**CANADIAN PACIFIC
(The "Company")**

- and -

**TEAMSTERS CANADA RAIL CONFERENCE -
RAIL CANADA TRAFFIC CONTROLLERS
(The "Union")**

**Kevin Mercs
Ten (10) Day Suspension
re: Delays to Expedited 100 Series Trains**

Arbitrator

Richard I. Hornung, Q.C.

For the Company:

Don McGrath - Manager Labour Relations
William McMillan - Manger Labour Relations

For the Union:

Jason Bailey - General Chairperson
Veronica Linkletter - Vice General Chairperson

Hearing Date:

April 26, 2019

Hearing Location:

Calgary, Alberta

Decision Date:

May 16, 2019

AWARD

I

On January 18 2018, Kevin Mercs, the Grievor, was issued a letter informing him of a ten-day suspension as a result of a failed three train meet at Walhachin which caused an unnecessary delay to trains 100-20, 603-290 and 871-131.

The circumstances were that the Grievor arranged a double meet involving expedited Train 100-20 with a loaded potash train (603-290) and coal train (871-131). The meet point that the Grievor chose (Walhachin) was only 9,460 feet long. However, the expedited 100 Train was 9,673 feet long. The other two trains had a combined footage well over 9,460 feet. The result was that when the trains arrived, Train 100-20 would not fit into the Walhachin siding to allow trains 603 and 871 to pass. Train 100-20 had to set off cars into the back track at Walhachin allowing it to clear the main line. After trains 603 and 871 passed, the crew on Train 100-20 put the train back together and departed. The cumulative time lost for Train 100-20 was one hour and 15 minutes.

In the investigation, the Grievor was candid that the train length of Train 100-20 was 9,673 feet while the siding length at Walhachin was only 9,460 feet. When he was asked why he chose Walhachin with its siding length for the meet, his explanation was that he:

“...mistakenly took the EGT as a train length which was 8,156 and would have fit at Walhachin.”

Essentially, he took the Estimated Gross Tonnage of the train to be its length.

The Union argues that the Grievor's error was a matter of simple confusion which did not warrant the discipline invoked. Regrettably, I disagree.

As made clear in **CROA 4448, 4660 and 4613**, the gravity of the position held by RTC's, although admittedly difficult, requires the full focus and attention of the RTC. As indicated by Arbitrator Frumkin in **AH333**:

“The position of rail traffic controller is a highly responsible position. It allows for little leeway in so far as full attention and optimal work performance is concerned. The consequences of anything less than this may be most serious and include severe damage to property, not to mention loss of life.”


I accept the fact that the position of RTC is demanding, safety sensitive and a highly responsible one. While the position may be demanding that fact cannot, in itself, explain away the Grievor’s mistake in taking the Estimate Gross Tonnage for the length of the train. Doing so, in the circumstances, reflects a level of inattention and lack of focus which cannot be ignored or, in this case, condoned.

A review of the Grievor’s record leaves me unable to find a reason to mitigate his penalty especially having regard to the fact that he was disciplined for the failure to tag a long train less than a year earlier.

Accordingly, I conclude that the Grievor’s conduct warranted discipline and I can find no mitigating circumstances that would lead me to substitute the penalty imposed.

The grievance is dismissed.

Dated at the City of Calgary this 17th of May, 2019.

A handwritten signature in black ink, appearing to read 'Richard I. Hornung', with a stylized flourish at the end.

Richard I. Hornung, Q.C.
Arbitrator