

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

**CASE NO. 4677**

Heard in Montreal, April 9, 2019

Concerning

**CANADIAN NATIONAL RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the assessment of 45 demerits, and subsequent discharge, for accumulation of demerits to Locomotive Engineer Matthew Ball of Melville, Saskatchewan for a stop signal violation.

**THE COMPANY'S EXPARTE STATEMENT OF ISSUE:**

On July 14, 2018 the grievor and his Conductor went past a stop signal while operating train Q101. Following an investigation the Company determined that the crew was in violation of CROR 439 by passing a stop signal without authority. Both members of the crew were assessed 45 demerits. This placed the grievor at 70 active demerits and subject to discharge for accumulation in excess of 60 demerits.

The Union's position is that discipline is excessive since it led to discharge. The Union also argues that Mr. Ball, who had recently returned from a previous discharge, was not properly trained before returning to the working board.

The Company disagrees with the Union's position.

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

**FOR THE COMPANY:  
(SGD.) M. Galan (for) K. Madigan  
VP Human Resources**

There appeared on behalf of the Company:

P. Payne – Manager Labour Relations, Edmonton  
D. Crossan – Manager Labour Relations, Prince George

And on behalf of the Union:

K. Stuebing – Counsel, Caley Wray, Toronto  
M. King – Vice General Chairperson, Edmonton  
K. C. James – General Chairperson, Edmonton  
M. Lukash – Local Chairperson, Melville  
M. Ball – Grievor, Melville

### **AWARD OF THE ARBITRATOR**

The grievor was the locomotive engineer operating his train from Rivers to Melville, a distance of about 13 miles. He was accompanied on this assignment by Conductor Colin Dumesnil. As he approached the Melville terminal, the grievor was instructed by the YTC to follow train Q119 down Track 1 and stop at the west end of the yard for fuel. Prior to arrival at Cana Junction, the grievor and the conductor had received verbal permission from the YTC to proceed into the yard after Q119 was clear.

At approximately 3 miles from the Melville Terminal, the crew received a "Clear to Stop" signal indication at mile 278.5, the signal prior to the Cana Junction at mile 2791N, and proceeded at a speed in keeping with the rules. The grievor failed to stop his train 300 feet in advance of the stop signal at mile 2791N, which was displaying a stop signal. The crew passed signal 271N at Cana Junction without authority at 2 mph. The grievor and Mr. Dumesnil were alerted shortly afterwards by the RTC office that the RTC had received an alarm regarding their failure to stop at the stop signal. The grievor stopped the train after receiving the RTC alert, using the locomotive's independent brakes.

During his investigation, the grievor explained that the reason for his error was due to the fact that he was focussed on the train ahead, Q119. Mr. Dumesnil indicated in his statement that he too was focused on protecting the tail end of train 119 at the time they passed through the stop signal.

The Company points out that the grievor has been involved in numerous disciplinary incidents, including several involving attendance issues on three occasions in 2014 and 2015 (written warning, 10 demerits, 15 demerits). In 2016 and 2017, he received discipline on three other occasions, the first of which included discipline for an attendance violation for which he received a two-week suspension. The two subsequent incidents in 2016 and 2017 involved violations of CRO Rules.

The first of the CRO Rules violation incidents involved a breach of CRO rule 104(b) and CRO rule 106 for failing to line a switch (written warning). The second incident involved numerous violations: violation of CRO rule 112 for failing to properly secure unattended railway equipment; violation of the Rivers subdivision footnotes-speed restricted tracks when he operated the train in excess of the allowable speed; exceeding allowable speed when performing a roll-by inspection of equipment pick up from the spur track; exceeding allowable speed when making a coupling to the train resulting in railcar being destroyed; and, failing to immediately report extent of damage to railway equipment and moving damaged equipment before obtaining authority to do so.

I note that the grievor was discharged as a result of the second incident on July 7, 2017. His discharge was later modified to a lengthy suspension without pay or benefits. He was requalified in CRO rules and received three weeks of familiarization training as a locomotive engineer. His review by the Company Engine Service Expert on July 3, 2018 found that the grievor “had the skills and knowledge going forward to be a confident locomotive engineer”. He was subsequently the assigned engineer on some twelve trips

between July 5 and July 14, 2018 when this incident took place. The Company submits that 45 demerits is not unreasonable under the circumstances and his discipline history properly resulted in his dismissal.

The Union notes that the incident was not of a “near miss” kind, nor resulted in an injury or damage to property. There were no other aggravating factors such as any delay, or damage to the Company’s property, or circumstances where a meaningful risk of danger arose. In the Union’s view, this was a momentary, inadvertent lapse on the part of the grievor and his conductor.

The Union further notes that both the grievor and his conductor were focused on the tail end of the train Q 119. The grievor was only travelling at 2 mph when he crossed the stop signal and was able to bring the locomotive to a complete halt in 103 feet. Overall, the Union submits that this was not a serious CRO rule 439 violation; that it occurred at a very slow speed; and, that it took place at a time when the grievor was focused on the tail end of the train in front of him. The grievor was also forthright at his investigation and did not try to evade any questions concerning his lapse of attention under the circumstances. The Union maintains that the grievor is a capable engineer and reinstatement should follow, with appropriate conditions as required for additional training or restriction to a conductor’s position for a period of time deemed appropriate by the arbitrator.

There is no dispute that some form of discipline is in order for the grievor's admitted breach of a cardinal rule. The grievor had been operating the train for about 3 miles before receiving the clear to stop signal indication which meant that that the grievor had to approach the next signal prepared to stop. He travelled from mile 278.5 through to 279.1 but did not stop at 279.1 despite the clear indication from the stop signal to do so. The fact that the grievor did not bring his train to a complete stop 300 feet short of 279.1 after passing through the 'clear to stop' signal, and then the stop signal indication itself, leads to the reasonable inference that the grievor was simply not paying attention to his locomotive engineer driving duties.

The grievor indicated at his investigation that he was in fact focused on the train in front of him. That is difficult to accept, given the train was out of his eyesight and it was daylight at the time. I characterize the grievor's explanation that he was "paying too much attention to the wrong thing [train in front] and accidentally crept by the light" as a spur-of-the-moment response that does not reflect what actually distracted him to miss both the 'clear to stop' signal and the stop signal itself. In my view, on balance, the evidence before me leads to the conclusion that the grievor was distracted inside the locomotive (as was his conductor) by something other than the train in front of them. Whatever it was, it was enough to divert the grievor's attention from performing the duties of a locomotive engineer.

The grievor has an unenviable record. He is not a long-term employee, having some six years of service with a lengthy suspension during that time for the second

incident, particulars of which were noted in the Company's submissions. I note in **CROA 1674** that Arbitrator Picher found that an employee with nine years of service "*...cannot be described as an employee of substantial long service*". Having reviewed the case law submitted, I also find the 45 demerits imposed by the Company to be within the range of established discipline (**CROA 3266**).

In addition, this is a case where the grievor appears to have viewed his duties without the appropriate seriousness they deserve. He was retrained after being dismissed on an earlier occasion. He was assessed by the Company after retraining to have been capable of returning to his duties. Instead of taking those duties seriously, he became distracted from his assignment. Under the circumstances, I am not disposed to alter the 45 demerit penalty which has unfortunately for the grievor resulted in his dismissal.

For these reasons, the grievance is dismissed.

May 1, 2019



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**JOHN M. MOREAU, Q.C.**  
**ARBITRATOR**