

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

CASE NO. 4710

Heard in Calgary, November 13, 2019

Concerning

BOMBARDIER TRANSPORTATION

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the dismissal of Locomotive Engineer P. Labbée.

JOINT STATEMENT OF ISSUE:

Following an investigation Mr. Labbée was dismissed from Company Service on December 10, 2018 as noted in his discipline letter as follows:

« Cette lettre es en référence à l'enquête tenue le 4 décembre 2018 concernant les anomalies qui se sont produites en date du 26 novembre 2018 alors que vous étiez mécanicien de locomotive sur l'affectation 9502 de la ligne Deux Montagnes.

L'enquête a révélée qu'alors que vous étiez mécanicien de locomotive sur le train 930 que vous ne vous êtes pas conforme aux exigences des règles 431 et 125 du REFC ainsi que de l'article 7.3 des instructions spéciales d'exploitation. De plus, a la question 12 de votre enquête formelle, vous avez admis avoir fait l'utilisation d'un appareil électronique personnel (téléphone cellulaire) alors que vous étiez aux commandes de train 930, ce qui contrevient au paragraphe XII de la règle général de REFC.

En raison de la gravite des infractions, la compagnie n'a d'autre choix que de mettre fin à votre emploi et ce, effectif en date du 10 décembre 2018. »

Union's Position:

The Union's position is that the outright dismissal in this case was excessive. Mr. Labbée was dismissed for speeding as noted in Rule 431, no emergency broadcast as noted in Rule 125, no inspection of his train after initiating an emergency brake application per Rule 7.3, and use of his cell phone as noted in General Rule XII.

Mr. Labbée used his cell phone as he had explained and that he only used it in the course of railway operations when his train was stationary and that he himself was on the platform of the station.

The initial mistakes made by Mr. Labbée were not disputed. Mr. Labbée did provide his mitigating factors but nonetheless he was still in violation.

The Union makes no attempt at downplaying what has taken place in this incident. With that said the Union requests that the discipline be substituted for a lesser penalty that the

Arbitrator thinks appropriate in the circumstances. We are further open to Mr. Labbée being restricted from working as a Locomotive Engineer for the remainder of his career.

Company's Position:

The Company disagrees and denies the Union's request.

FOR THE UNION:

(SGD.) W. Apsey

General Chairperson

FOR THE COMPANY:

(SGD.) A. Ignas

Director Human Resources

There appeared on behalf of the Company:

- R. Groves – Counsel, Norton Rose, Toronto
- A. Ignas – Manager Human Resources, Toronto
- G. Blackwell – Operations Support, Global, Toronto

And on behalf of the Union:

- R. Church – Counsel, Caley Wray, Toronto
- W. Apsey – General Chairperson, Smiths Falls
- E. Mogus – Vice General Chairperson, Smiths Falls

AWARD OF THE ARBITRATOR

The grievor entered into the service of the Company as a Locomotive Engineer on July 1, 2017. He had previously been employed by CN, beginning in 1981 through to July 1, 2017 when he retired.

There were train delays on the morning November 26, 2018 which were caused by a tragic suicide earlier that day on the Deux Montagnes line. The grievor's eastbound destination on his passenger train that morning was the Central Station in downtown Montreal. The last three stops on the Deux Montagnes line were Montpellier station, Canora station and, finally, Central Station.

The grievor's train was declared to be in a state of emergency upon arrival at the Montpellier station due to the tragic suicide incident. The grievor disembarked his locomotive to assist with the passengers and also used his cell phone while standing on

the station platform. He called the RTC at that time to determine the procedure to be used in light of the incident before heading to the Canora station. Prior to arriving at the Canora Station, the grievor received a call from his conductor over the radio to confirm the advance signal indication at Jean Talon because the conductor's view was obstructed by another train. The grievor indicated the signal was "Medium or Slow to Limited". The Conductor then asked the grievor again to reconfirm the signal upon arrival at the Canora station. The grievor left the train and stepped on to the platform in order to get a proper view of the signal at the Canora station. He confirmed with his conductor that the signal was at "Normal/Low". The conductor then closed the doors to the train.

Shortly after the doors closed, the grievor was confronted by a passenger in his cab who had been unable to disembark at Canora. The grievor dealt with the passenger by asking him to leave the cab. The grievor stated that he momentarily forgot the signal for the crossing at Jean Talon due to the distraction and interruption by the passenger. It was only upon entering the crossing that the grievor realized that his speed was excessive. He immediately applied the emergency brake. There is no dispute that the speed limit on the track was 15 m.p.h. and the grievor crossed it at 42 m.p.h.

The grievor said that he was in a state of panic after he applied the emergency brake. He indicated that he was concerned for the safety of his conductor who was still in the tunnel and that he was focussed on not delaying the train. The conductor did in fact call the grievor on his radio after the emergency brake was applied and asked the

grievor if he wanted to conduct an inspection. The grievor declined the offer of inspection and told the conductor that he would report the incident at the next station. The grievor refilled the compressed air system and then proceeded slowly, checking for flats. The grievor then continued on to the Central Station where he reported the incident to his Operations Supervisor.

The Union admits that the grievor failed to make an emergency broadcast call after an emergency stop, as required by CRO Rule 125. The Union also does not dispute that the grievor failed to follow the proper procedures regarding the inspection of the train after an emergency stop, as set out in Section 7.3 of the General Operating Instructions.

The Union notes, on the other hand, that while the grievor did use a cell phone while on duty, he did so for work-related purposes while on the station platform and not on the train.

The Union also cites other mitigating factors. The grievor readily admitted at his investigation that he was speeding. The evidence is also undisputed that the grievor was distracted by a passenger who confronted him in the cab close to the time he exceeded the required speed through the crossing. Further, it is not disputed that the grievor reported the incident upon arrival at the next station and made no effort to conceal what had happened.

The Union also adds that the termination penalty imposed on the grievor is discriminatory given that a relatively short suspension of seven days was imposed on the conductor, who also failed to perform the required inspection and initiate an emergency radio broadcast. The arbitrator notes that it was the grievor who was distracted and solely responsible for driving the locomotive through the crossing at an excessive speed. Further, the conductor explicitly asked the grievor over the radio about performing an inspection after the train was stopped, as required by the rules. It was the grievor who instructed the conductor, contrary to the rules, that they would do so at the next station. Under the circumstances, I do not find there is a basis to conclude that the two employees engaged in similar conduct that constitutes discriminatory discipline.

The only remaining question is with respect to the appropriateness of the termination penalty.

The Company alleges, as one of the grounds for discipline, the grievor's misuse of his personal cell phone. In addition to having just received the troubling news of the tragic suicide incident, I note that the cell phone call was made on the platform at Montpellier and for work purposes. The circumstances that morning involving the tragic suicide incident are sufficiently mitigating in my view to excuse the grievor for using his own cell phone on this occasion. There is therefore no basis for discipline in my view for the grievor's use of his personal cell phone.

Turning to the main incident, the arbitrator agrees with the Company that the importance of safety in the rail industry cannot be overemphasized. The fact that employees are regularly re-certified in the rules of the CROR underlines the importance of safety, particularly with respect to running trade employees like the grievor.

The grievor, an experienced locomotive engineer, sped through a crossing, exceeding the required speed by almost 30 mph. That is of major concern, as reflected in the rules of the CROR, particularly when one considers the tragic consequences that could occur had there been anyone standing at or near the crossing. Of added and equally significant concern is that the grievor did not immediately report the incident, but instead waited until he arrived at the next station. That decision was taken in the face of his conductor's request to perform an inspection in keeping with the established rules. It was the grievor, and not his conductor, who decided not to report the incident immediately over the radio to his Supervisor.

The grievor's reluctance to follow established rules, particularly after an emergency, coupled with the excessive speed he passed through the crossing in the locomotive, undermines the bond of trust one expects of an employee in a safety-sensitive position, and in particular a locomotive engineer.

CROA 3189 also involved the termination of two locomotive engineers for excessive speeding through a crossing, an incident the arbitrator considered as "very serious". In that case, however, the two employees had 24 and 29 years of service and

no record of similar infractions for over ten years. The grievor, by contrast, has only been in the service of the Company for a year and a half and has twice been disciplined in the two months prior to his dismissal, a written warning and a 5-day suspension.

In the end, I must reluctantly agree with the Company that the nature of this very serious incident, coupled with the grievor's short service, undermines the key ingredient of trust required of an individual with responsibility for driving a train with frequent stops as part of their normal crew assignment. That element of trust is particularly important in trains that carry passengers where a locomotive engineer's undivided attention is required at all times.

For all the above reasons, I must reluctantly dismiss the grievance.

December 4, 2019



JOHN MOREAU
ARBITRATOR