

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

**CASE NO. 4819**

Heard via Video Conference and in Ottawa, Ontario, April 14, 2022

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the outright discharge of Locomotive Engineer T. Smith of Winnipeg, MB for a violation of CROR 439.

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

On January 9, 2020 Mr. Smith was operating train G80441-09 on the Rivers Subdivision when the train passed Signal 50A at St. James Junction, which was displaying a Stop indication, without authority, in violation of CRO Rule 439. Following an investigation, the Company determined that the Grievor was in violation of CRO Rule 439 and assessed him an outright discharge from service.

The Union's position is that discharge is excessive under all of the circumstances, and that the Company has not taken into consideration the mitigating circumstances, and requests that discipline be reduced to a more appropriate level, with the inclusion of an educational component to address any shortcomings in Mr. Smith's abilities, and that Mr. Smith be reinstated without loss of seniority and that he be made whole for all lost wages and benefits.

The Company disagrees with the Union's position.

**FOR THE UNION:**

**(SGD.) K.C. James**  
General Chairperson

**FOR THE COMPANY:**

**(SGD.)**

There appeared on behalf of the Company:

- L. Dodd – Manager, Labour Relations, Winnipeg
- M. Boyer – Senior Manager, Labour Relations, Montreal
- A. Hernandez-Gutierrez – Jr. Associate, Labour Relations, Montreal

And on behalf of the Union:

- K. Stuebing – Counsel, Caley Wray, Toronto
- KC. James – General Chairperson, Edmonton
- T. Russett – Senior Vice General Chairperson, Edmonton
- K. Ilchyna – Local Chairperson, Winnipeg
- T. Smith – Grievor, Winnipeg

### **AWARD OF THE ARBITRATOR**

1. The Grievor was a Locomotive Engineer, working in Winnipeg, Manitoba. His employment was terminated following a Rule 439 violation on January 9, 2020. At the time of the incident, the Grievor had approximately nine years of service and was thirty-four years old.

2. On January 9, 2020, the Grievor was the Locomotive Engineer on a train operating on the Rivers Subdivision, heading eastward into Winnipeg's Symington Yard. The Rivers Subdivision is a heavily-used corridor. The Grievor was familiar with this section of track as well as its succession of signals.

3. The Grievor and the Conductor observed a "clear to stop" signal at Carmen Junction (mile 8.3). This meant that the crew needed to prepare to stop at the next signal, which is located at St. James Junction (mile 4.8).

4. The signal immediately after St James Junction is less than one mile away, at Waverley (mile 3.9). The Waverley signal was green.

5. The Grievor and his Conductor mistook the Waverley Signal (green) for the St James Junction signal (red). When they realized their error, the crew took steps to stop the train, applying air brakes and putting the train into emergency. When it was brought to a stop, the headend of the train went past the signal by about two-car lengths.

6. There is no dispute that this constitutes a Rule 439 violation. In misreading the signal, the Grievor failed to stop his train, as required, at St. James Junction. Rule 439 is a cardinal rule, which is treated very seriously in the CROA jurisprudence. I was not advised of any injuries or damages in this case, although a Rule 439 violation certainly has the potential for catastrophic consequences.

7. It is important to note that the Grievor was disciplined for a Rule 439 violation in August 2018, approximately sixteen months earlier. These are two serious and similar violations, which occurred in relatively quick succession.

8. In this case, the Union submits that the discipline should be reduced because of mitigating factors. The Union explained that the Waverley signal uses a LED light, which makes it much brighter than the non-LED signal at St. James. According to the Union, this can create an “illusion” and make Waverley appear closer than the signal at St. James. The Union submits that it has raised this issue with the Company in the past. However, the Company disputes that there have been any particular problems on this section of the track.

9. The Grievor cooperated with the investigation, he took responsibility for his actions, and he demonstrated remorse.

10. I have considered the Grievor's circumstances carefully. Even assuming that the signal lighting made it more challenging for the Grievor to identify and read the signals, I am not persuaded that the penalty of discharge was unreasonable in this case.

11. In reaching this conclusion, I note that the Grievor was familiar with this section of the track and its signals. As noted, a Rule 439 violation is a serious offence and it has the potential for catastrophic consequences. The Grievor's previous Rule 439 violation, only sixteen months earlier, is an important aggravating factor. Significantly, the previous Rule 439 violation also involved a misreading of signals. In that case, the Grievor also believed he had a permissive signal, when he was in fact required to stop.

12. For these reasons, I cannot conclude that the Grievor's discharge was unreasonable in the circumstances. The grievance is therefore dismissed.

April 22, 2022



---

**MICHELLE FLAHERTY**

**ARBITRATOR**