

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2071

Heard at Montreal, Tuesday, 13 November 1990

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Dismissal of Locomotive Engineer R. Lachance, 10 October 1989, for the accumulation of more than 60 demerits

JOINT STATEMENT OF ISSUE:

On 27 September 1989, Mr. R. Lachance was the locomotive engineer on Train 389 (Extra 9443 South) operating between Garneau (Quebec) and Montreal. On that date a work crew was working between Mileage 102 and Mileage 112 on the Joliette Subdivision.

The crew of Train 389 was in possession of the train order reproduced below:

"Between the following hours: - zero seven hundred 0700 - and eighteen hundred 1800 - southbound trains approaching the red signal at Mileage one hundred two 102 - and northbound trains approaching the red signal at Mileage one hundred twelve 112 - Joliette Subdivision - be prepared to stop and do not pass this signal without instructions to do so - from Foreman G,rard Lebeau - either by radio communication or by personal contact"

(translation)

Despite the requirements of the train order, part of the grievor's trains passed the red signal at Mileage 102, without the prior authorization of Foreman Lebeau.

Following an investigation, 30 demerit marks were assessed to the grievor for: having failed to conform to the requirements of UCOR Rule 27, resulting in a violation of UCOR Rule 42 at Mileage 102 on the Joliette Subdivision, while working as the locomotive engineer on Extra 9443 South, 27 September 1989.

This discipline, when added to the 45 demerit marks already on his discipline record, gave the grievor a total of 75 demerits, which resulted in his discharge.

The Brotherhood maintains that the red signal was badly situated, that this was a minor incident which did not present any risk of collision, and that for this reason the discipline is unjustified and, in any case, too severe.

FOR THE BROTHERHOOD:

(SGD) G. HALL
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) M. DELGRECO
FOR: ASSISTANT VICE-PRESIDENT
LABOUR RELATIONS

There appeared on behalf of the Company:

M. S. Hughes	System Labour Relations Officer, Montreal
J. B. Bart	Manager, Labour Relations, Montreal
J. E. Pasteris	Manager, Labour Relations, St. Lawrence Region, Montreal
O. Lavoie	Labour Relations Officer, St. Lawrence Region, Montreal
A. Zubricky	General Yardmaster, Rivière des Prairies
M. S. Fisher	Coordinator, Transportation, Montreal

And on behalf of the Brotherhood:

G. Hall,	General Chairman, Quebec
G. Whiteman	Local Chairman, Montreal
R. Lachance	Grievor

AWARD OF THE ARBITRATOR

The evidence establishes, to the satisfaction of the Arbitrator, that the grievor was liable to a significant amount of discipline for passing the red flag at Mileage 102, contrary to the directives of his daily operating bulletin, as well as the requirements of UCOR Rules 27 and 42. Given the state of his discipline record, which includes two incidents of speeding, one of which occurred after his reinstatement by the Arbitrator in 1988 (CROA 1769), I must come to the conclusion that the thirty demerits, and his subsequent discharge, were justified in the circumstances of this case.

For these reasons the grievance is dismissed

November 16, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR