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Canadian Railway Office of Arbitration

Case No. 2556

Heard in Montreal, Wednesday, 14 December 1994

concerning

VIA Rail Canada Inc.

and

Brotherhood of Locomotive Engineers

ex parte

Dispute:

The assessment of 30 demerits and time held out of service to count as suspension, for violation of CROR Rule 429.

Ex Parte Statement of Issue:

Messrs. G.G. Reid and D.J. Pinnell were the first and second locomotive engineers respectively operating Passenger Extra Via 6437 from Halifax to Moncton on November 18, 1993.

At mileage 61.5 on the Bedford Subdivision Passenger Extra Via 6437 west passed stop signal without proper authority.

The train subsequently proceeded to the next station (Truro).

At Truro first Locomotive Engineer G.G. Reid was replaced and the train continued.

Formal statements were taken from the crew on November 22 and 23, 1993.

First Locomotive Engineer G.G. Reid was assessed 45 demerits and time held out of service to count as suspension.

Second Locomotive Engineer D.J. Pinnell was assessed 30 demerits and time held out of service to count as suspension.

It is the Brotherhood's position that Locomotive Engineer Pinnell could not have prevented Locomotive Engineer Reid from over-running the stop signal.

The Brotherhood contends that Locomotive Engineer Pinnell should not be held accountable for the actions of Locomotive Engineer Reid over which he had no reasonable control.

The Corporation's position is that the discipline was warranted.

for the Brotherhood:

(sgd.) B. E. Wood

General Chairman

There appeared on behalf of the Corporation:

D. A. Watson- Senior Officer, Labour Relations, Montreal

K. Taylor - Senior Advisor and Negotiator, Labour Relations, Montreal

And on behalf of the Brotherhood:

B. E. Wood - General Chairman, Halifax

award of the Arbitrator

The thrust of the Brotherhood's submission is that second Locomotive Engineer Pinnell should not have been held responsible for the movement of passenger extra VIA 6437 through the stop signal. It argues that the grievor was occupied copying a clearance permission from the crew of a work extra when first Locomotive Engineer Reid erroneously proceeded through Signal 61.5 which was displaying a stop aspect. The Brotherhood relies, in part, on CROA 2230 where it was found that a second locomotive engineer was not responsible for a stop signal violation where it was disclosed that after the train had stopped the first locomotive engineer initiated a forward movement which could not

be anticipated.

The case at hand is, in my opinion, substantially different. It cannot be disputed that all members of a crew responsible for the movement of a train bear a degree of obligation to ensure that their train observes all signals. The obligation of a locomotive engineer in this regard is particularly heightened, as regards stop signals. CROR 124 provides as follows:

124      Avoiding Distraction

GBO, train orders, authorities or instructions, required to be in writing, must not be copied by the employee operating moving equipment, if it will interfere with the safe operation of such moving equipment.

The Brotherhood's representative suggests that the above provision only applies to the locomotive engineer who is operating moving equipment. The use of the word "the" in reference to the employee operating moving equipment would, on its face, tend to support that interpretation, although it might be arguable that the language of the provision might extend more generally to all crew members responsible for the operation of a train or any moving equipment. In the Arbitrator's view it is unnecessary to resolve that issue for the purposes of the case at hand.

The issue to be addressed is whether a second locomotive engineer is in any way absolved from his or her general responsibility to observe and obey track signals. In my view there can be no equivocation in respect of so fundamental an obligation. There are, no doubt, many obligations to be performed by a locomotive engineer, or for that matter a conductor or brakeman, located in the cab of a locomotive which might divert his or her attention from observing the surroundings. Where, however, as in the case at hand, it is known that a stop signal is being approached and must be respected, such tasks as reading or transcribing train orders or clearances, or referring to timetables or any other documents, cannot take precedence over the primary duty of the second locomotive engineer to maintain full vigilance in respect of the track signals.

This is not, moreover, a case comparable to CROA 2230, to the extent that the train for which second Locomotive Engineer Pinnell was responsible had not come to a stop in a timely fashion. In the Arbitrator's view to sustain the view advanced by the Brotherhood in the case at hand would substantially undermine the purpose of having two locomotive engineers in passenger service, and the related safety considerations. While the Corporation appropriately acknowledged the reduced responsibility of Mr. Pinnell by reason of the assessment of a lower measure of discipline against him, as compared with first Locomotive Engineer Reid, the Arbitrator cannot find that the decision of the employer to discipline the grievor was inappropriate in the circumstances or that the measure of discipline is unfair, given the cardinal rule that was violated.

For these reasons the grievance must be dismissed.

16 December 1994 (sgd.) MICHEL G. PICHER

ARBITRATOR