CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2625

Heard in Calgary, Wednesday, 10 May 1995

concerning

Canadian National Railway Company

and

canadian Council of Railway Operating Unions [Brotherhood of Locomotive Engineers]

DISPUTE:

Appeal the 90 days suspension assessed Locomotive Engineer M.T. Scherbluk of Edmonton, Alberta for violation of CROR 429 and failure to comply with the requirements of Canadian Rail Operating Rule (CROR) 572 at Signal 2595 on Wainwright Subdivision on September 9, 1991.

JOINT STATEMENT OF ISSUE:

On September 9, 1991 Mr. M.T. Scherbluk was employed as locomotive engineer on the 1300 Extra Yard Assignment which was pulling a cut of 21 loaded cars and 6 empty cars off the CN/CP interchange track to take into Clover Bar Yard. Upon proceeding westward of the Wainwright Subdivision, the movement passed Signal 2595 which was indicating stop.

Following an investigation into the incident, Locomotive Engineer Scherbluk was assessed a 90 day suspension effective September 9, 1991 for: “Violation of Rule 429, CROR & failure to comply with the requirements of Rule 572 at Signal 2595, Wainwright Sub. on September 9, 1991.”

The Brotherhood has appealed the discipline on the grounds that it is too severe.

The Company has declined the appeal.

FOR THE Council: FOR THE COMPANY:

(SGD.) M. W. Simpson (SGD.) B. Laidlaw

for: General Chairman for: Senior Vice-President, Western Canada

There appeared on behalf of the Company:

B. Laidlaw – Labour Relations Officer, Edmonton

R. Reny– Labour Relations Officer, Edmonton

A. Wagner – Alberta District Transportation

And on behalf of the Council:

M. W. Simpson – Vice-General Chairman, Saskatoon

D. Shewchuk – Vice-General Chairman, Saskatoon

AWARD OF THE ARBITRATOR

The facts giving rise to the suspension assessed against Locomotive Engineer Scherbluk are dealt with in CROA 2331, which involved the discharge of Yard Foreman Campbell, who was part of the grievor’s crew in the execution of the transfer movement near Signal 2592 on the Wainwright Subdivision on September 9, 1991. The facts need not, therefore, be reviewed in detail here. It is significant to note, however, the finding made in the prior award that the yard foreman “... failed to alert the locomotive engineer with whom he was working in sufficient time to prevent their yard movement from passing a stop signal.” The evidence before me discloses that Yard Foreman Campbell had a clear view of Signal 2595, while Locomotive Engineer Scherbluk did not, by reason of the relative positions of the two men, and the curvature of the track.

When regard is had to the facts of the incident, and to other mitigating factors, including the grievor's service of sixteen years, and his prior disciplinary record over that time, which involved the assessment of only ten demerits in a matter unrelated to train movement rules, there is some significant basis to consider a reduction of penalty by the exercise of the Arbitrator's discretion. While, as the Company notes, violations of Rule 429 have attracted a serious degree of discipline over the years, as noted in the review of cases found in CROA 2356, there has been a range in the length of suspensions in the cases recorded, varying from 45 days to 9 months.

The evidence confirms that Locomotive Engineer Scherbluk was in a disadvantaged position from which to view Signal 2595, and was required, to a substantial degree, to rely upon the diligence of Yard Foreman Campbell, who had a better view of the signal and clearly failed in his obligation to call it in time. It also does not appear disputed that the grievor's train in fact stopped short of the signal, but that the slack of his movement pushed the lead engine some two feet across the bond, thereby occasioning the violation of CROR 429. Locomotive Engineer Scherbluk was required to communicate with the RTC to determine whether in fact he had entered the block. While these facts do not excuse the infraction of rules 429 and 572, they can be viewed as mitigating insofar as they relate to the actions and responsibility of Locomotive Engineer Scherbluk.

When these facts are taken into account, along with the length and quality of his service, the Arbitrator is satisfied that although a suspension was justified, it should, in the circumstances, be assessed at the lower end of the scale. For these reasons the Arbitrator directs that a suspension of 45 days be substituted for the 90 day suspension assessed by the Company, and that the grievor be compensated for wages and benefits, accordingly.

May 18, 1995(sgd.) MICHEL G. PICHER
ARBITRATOR