CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2952
Heard in Calgary, Thursday, 14 May 1998
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[BROTHERHOOD OF LOCOMOTIVE ENGINEERS]

DISPUTE:

Appeal of discipline, 30 demerits and time held out of service, assessed Locomotive Engineer R.W. Rykyta of Kamloops, B.C. on September 10, 1992.

JOINT STATEMENT OF ISSUE:

On September 10, 1992, Mr. R.W. Rykyta was employed as the locomotive engineer on train 771 LY09, Extra 5426 West. While proceeding westward at Birch Island on the Ashcroft Subdivision, approaching signal 61.7, Conductor Landals copied a C.R.O. Rule 564 for authority to pass signal 60.3. Train 771 LY09 passed signal 61.7, Ashcroft Subdivision without authority, stopping shortly thereafter.

Following a formal investigation and subsequent Root Cause Analysis, Mr. Rykyta's personal record was assessed thirty demerits and time held out of service from September 10, 1992 to September 16, 1992 inclusive for violation of C.R.O. rule 429.

The Brotherhood contends that the discipline assessed Mr. Rykyta is too severe in light of the mitigating factors, and that Mr. Rykyta's participation in the Root Cause Analysis be reflected in the discipline.

The Company disagrees.

FOR THE COUNCIL:
FOR THE COMPANY:
(SGD.) D. J. SHEWCHUK FOR: **GENERAL CHAIRMAN**
(SGD.) D. VAN CAUWENBURGH
FOR: **ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**
There appeared on behalf of the Company:
D. Van Cauwenbergh Labour Relations Officer, Edmonton
J. Dixon
J. Bauer
- Assistant Manager, Labour Relations, Edmonton
- Human resources Business Partners, Great Plains District, Transportation, Edmonton
And on behalf of the Council:
D.J.Shewchuk
D. E. Brummund
Sr. Vice-General Chainnan, Saskatoon Vice-General Chairman, Saskatoon

AWARD OF THE ARBITRATOR

It is not disputed that on September 10, 1992 Locomotive Engineer Rykyta passed signal 61.7, Clearwater Subdivision, without proper authority from the rail traffic controller, contrary to CROR rule 429. It further appears that he failed to stop at the signal. The grievor believed that he had a 564 authority for the signal in question, apparently by reason of confusion in part prompted by the rail traffic controller. Nevertheless, even assuming that he believed he had a 564 authority, Locomotive Engineer Rykyta failed to stop his movement at the signal, prior to proceeding, as required by operating rules.

There can be little doubt that the instant case discloses a cardinal rule violation, of a type which would normally attract an extremely serious form of discipline. Following a Root Cause Analysis, the Company determined that mitigating factors would justify the assessment of thirty demerits and time held out of service for some six days, as the appropriate measure of discipline. In all of the circumstances the Arbitrator is not inclined to disturb that judgement. Although the grievor's discipline record was clear at the time of the incident, he did have several prior notations of earlier rules' violations against his record. On the whole, the Arbitrator is satisfied that the assessment of thirty demerits and the holding of the grievor out of service for some six days was within the appropriate range of disciplinary response.

The grievance must therefore be dismissed.

May 19, 1998

MICHEL G. PICHER
ARBITRATOR