

**CANADIAN RAILWAY OFFICE OF ARBITRATION**

**CASE NO. 3097**

Heard in Montreal, Thursday, 10 February 2000  
concerning

**VIA RAIL CANADA INC.**

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**EX PARTE**

**DISPUTE:**

Appeal the discipline assessed to 3 VIA crew members on Train 76 as a result of alleged incident on September 20th 1998. All crew members were charged with running through a main track switch at mile 60.7 Chatham Sub and not reporting it in accordance with the CROR.

**EX PARTE STATEMENT OF ISSUE:**

The Brotherhood submits that during their hearing the investigating officer prejudiced these employees by drawing upon his personal conclusions and blaming the crew for violating the results and not reporting same thereby violating their rights to a fair and impartial hearing.

All 3 employees were subsequently disciplined differently which included 45 demerit marks, a 60 day suspension, and a permanent demotion from the locomotive engineer training program.

The Brotherhood requested the record of conversations between the RTC and any crews reporting the position of the switch at mile 60.7 OK. The Brotherhood was advised by VIA that these tapes were accidentally erased. As a result, the crew and the Brotherhood were denied the right to key evidence in this case.

One VIA officer took a leading narrative report from the student locomotive engineer and not from the regular locomotive engineers. It was presented and used in evidence against the crew at their hearing. In addition, there were other discrepancies found in the evidence presented that remain puzzling.

Grievances were filed by the Brotherhood in accordance with the agreement in effect. No response was received from the Corporation as they were waiting for CN to respond.

The Brotherhood respectfully requests that the discipline assessed be stricken from their records and that this crew be made whole for any or all time lost with no loss of seniority.

**FOR THE BROTHERHOOD:**

**(scD.) J. R. TOFFLEMIRE**  
**GENERAL CHAIRMAN**

There appeared on behalf of the Corporation:

E. J. Houlihan - Sr. Manager, Labour Relations, Montreal  
G. Benn - Labour Relations Officer, Montreal  
J. P. Pollender - Manager, Customer Services, Montreal  
M. Bastion - Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. R. Tofflemirc - General Chairman', Oakville  
M. Grieve - Local Chairman, Toronto

### **AWARD OF THE ARBITRATOR**

Upon a review of the material filed the Arbitrator is satisfied, on the balance of probabilities, that train 76, operated by the grievors, did run through a reversed switch at mileage 60.7 of the south track of the Chatham Subdivision. It is common ground that the grievors' OCS clearance on the day in question contained a warning for the switch in question. An examination of the sequence of traffic past the switch leads to the most probable conclusion that the grievors' train was in fact the final movement to proceed over the switch before it was found to have been damaged, as reported by train 75 several hours later.

The Arbitrator does not sustain the suggestion of the Corporation that train 75 in fact must have stopped at the switch because of a communication from the crew of train 76. The discovering of the fouled switch by the crew of train 75 is entirely consistent with their simply viewing the switch, which was apparently lined in the reverse position and displaying a red target.

What the evidence discloses, to the Arbitrator's satisfaction, is inattention on the part of the grievors, operating train 76. It is common ground that one of the grievors, Mr. McAndrew, was in the body of the train where he could obviously bring no vigilance to bear in the operation of his movement. The train was being operated by Trainee Engineer Busby, under the supervision of Locomotive Engineer McNay. A narrative interview of Mr. Busby confirms that he had no real recollection of the switch, and contains an admission on his part that he may well have missed it.

The seriousness of the grievors' actions, including violations of a number of aspects of **CROR** rule 104, which governs the lining of switches on main tracks, can scarcely be understated. In the circumstances I am satisfied that the assessment of forty-five demerits to Mr. McNay was appropriate, as was the removal of Mr. Busby from the locomotive engineer training program. While initially the discipline assessed against Mr. McAndrew was both thirty demerits and a sixty day suspension, at the hearing the Corporation confirmed that the thirty demerits, which would constitute a double penalty, are to be removed from his record. In the circumstances, I am satisfied that the remaining assessment of a sixty day suspension is within the appropriate range of discipline for a cardinal rule violation of this kind.

For the foregoing reasons, and subject to the adjustment of Mr. McAndrew's record, the grievances must be dismissed.

February 12, 2000

**MICHEL G. PICHER**  
**ARBITRATOR**