

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3225
Heard in Calgary, Thursday, 15 November 2001
concerning
CANADIAN PACIFIC RAILWAY
and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)

DISPUTE:

The assessment of 50 demerit marks to Medicine Hat conductor, K.W. Christie and his subsequent dismissal account an accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

On May 28, 1999, following an investigation, Conductor Christie's record was debited with fifty (50) demerit marks for: his failure to ensure that his train was operated in a safe manner; for his failure to ensure observation of posted speed restrictions; his failure to ensure that his train was sufficiently under control to enable stopping short of a signal indicating stop; his failure to initiate a proper emergency broadcast after his train had passed a signal indicating stop; his failure to ensure that his train was given a pull-by inspection after being stopped by an emergency application of brakes; his failure to ensure that his train had proper authority to proceed after having passed a signal indicating stop; for his failure to promptly and properly report the occurrence of his train having passed a signal indicating stop; and for providing false and misleading information to a Company officer when questioned concerning the incident; Train 405/406, 9005 West Bowell to Shepard at Shepard East, Mile 165.5 Brooks Subdivision, ay 9, 1999. Conductor Christie was subsequently discharged on account of an accumulation of demerit marks.

The Council contends the discipline assessed to Conductor Christie was too severe in all of the circumstances. The Council has requested that the discipline imposed be reduced and, in any event, the penalty of dismissal should be mitigated.

The Council requests Conductor Christie be reinstated on terms the Arbitrator considers appropriate.

The Company has declined the Council's request to reinstate Mr. Christie. The Company's position is that Mr. Christie violated a number of operating rules and compounded his situation by failing to properly report the incident and by lying about the occurrence after it was discovered.

FOR THE COUNCIL: FOR THE COMPANY
(SGD.) D. H. FINNISON (SGD.) C. M. GRAHAM
FOR: GENERAL CHAIRPERSON FOR: GENERAL MANAGER, FIELD OPERATIONS

There appeared on behalf of the Company:
D. E. Guerin - Labour Relations Officer, Calgary
C. M. Graham - Labour Relations Officer, Calgary
G. S. Seeney - Manager, Labour Relations, Calgary

And on behalf of the Council:
D. Ellickson - Counsel, Toronto
L. O. Schillacci - General Chairperson, Calgary
D. Finnson - Vice-General Chairperson, Calgary
K. W. Christie - Grievor

AWARD OF THE ARBITRATOR

The material establishes, beyond controversy, that the grievor's movement was involved in a Rule 429 violation on May 9, 1999. While serving as conductor on

train 405/406 on the Brooks Subdivision, Conductor Christie allowed his movement to pass signal 165.5 at Shepard by approximately one half a car length. It appears that he received a clear to stop signal some four miles previous, and because of his own inattention, and the inattention of his workmate Locomotive Engineer Stewart Galambos, the train was put into emergency braking when they finally noticed the stop signal.

The grievor's obligation at that point was plainly to notify the rail traffic controller of the situation, to flag pending further instructions and to perform a pull-by inspection of his train. He failed to do all of the above.

In fact, the evidence indicates that the communication with the rail traffic controller (RTC) was immediately made by Locomotive Engineer Galambos. He simply said to the RTC:

"... you can see what happened here ... we're lined to track 2 here. The yard crew said okay, come in track 2, down to track 9 and uh okay for to carry on."

Not understanding that there had been a Rule 429 violation, the RTC merely instructed the locomotive engineer to proceed. The evidence does indicate, however, that some time later Conductor Christie had second thoughts about the fact that he had not reported the incident to the rail traffic controller. He made an initial call to the RTC asking "Where do we stand on what's happened here, at uh, at Shepard?" When the RTC responded that he was not aware that anything had happened the grievor simply responded, "... okay good enough then."

Some forty minutes after that exchange, however, he obviously still felt uncomfortable and again called the RTC and fully disclosed that they had passed the stop signal at Shepard. His exchange with the RTC at that point indicated that he had been advised by "... my union guys" that he should make it clear to the RTC what had transpired at Shepard.

However, the evidence indicates that the grievor was still not fully forthcoming. Shortly thereafter, in a radio conversation with the operations manager, he indicated that normal procedures had been complied with, including flagging, an inspection of the train and proper communication to the RTC about the emergency condition. Those statements were false, as subsequently emerged during the course of the disciplinary interview conducted by the Company. It appears that Locomotive Engineer Galambos first revealed the failure to follow the proper procedures, and the grievor confirmed Mr. Galambos' version in his own subsequent statement.

The record also indicates that on two other occasions during the same tour of duty the grievor's movement exceeded speed limits, once on the main line and once in a siding.

At the time of the incident the grievor's disciplinary record stood at twenty-five demerits. The assessment of a further fifty demerits resulted in his dismissal. The sole issue before the Arbitrator is whether there are grounds to reduce the penalty assessed and, as the Council submits, reinstate the grievor into employment. After careful consideration I am satisfied that, while the Company's concerns with the pattern of conduct exhibited by the grievor are understandable, on the whole there are mitigating circumstances which do merit a reduction of penalty, albeit to the very grave alternative of a suspension exceeding two years.

The grievor is an employee of seventeen years' service, with only one rules infraction against his record prior to the incident at Shepard. As is evident from the material before me, he made a grave error in judgement when his movement did pass the stop signal at Shepard. Although he plainly failed to immediately advise the RTC of the emergency situation, there was a degree of vagueness surrounding the nature of the locomotive engineer's communication at the time. Afterwards he did "come clean" with the RTC, apparently after

obtaining correct advice from a union representative. While it is unfortunate that Mr. Christie still sought to soften the incident by suggesting that the proper procedures had been followed, the fact remains that he did bring the incident to the Company's attention in a circumstance where he might well have evaded all detection by simply saying nothing. Perhaps most importantly, the fact that the grievor had registered only one rules infraction over his seventeen previous years of service would suggest that what transpired was highly uncharacteristic, and involved a serious lapse of judgement in the stress of an isolated incident.

On the whole, therefore, I am satisfied that it is not inappropriate to exercise my discretion to substitute a penalty in the case at hand. To some degree the facts of the instant case are comparable to those considered in CROA 2356, regard being had to the review of the overall jurisprudence concerning Rule 429 violations reflected in that award. It is nevertheless my view that a serious measure of discipline is warranted, and that this is plainly not a case for compensation, notwithstanding that the events in question occurred more than two years ago.

The grievance is therefore allowed in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation or benefits, and without loss of seniority. The period of time between the grievor's termination and his reinstatement shall be recorded as a suspension for the rules violations specified in the Form 104 which issued to Mr. Christie. Upon reinstatement the grievor's disciplinary record shall stand at forty-five demerits.

November 16, 2001

MICHEL G. PICHER
ARBITRATOR