

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3231

Heard in Montreal, Thursday, December 13, 2001
concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)**

EX PARTE

DISPUTE:

Appeal of the assessment of thirty-five (35) demerits to the personal record of Locomotive Engineer R.I. Sampson of Terrace, B.C. for "your responsibility in violation of C.R.O.R. 429 at Terrace east on September 23, 1999 while employed train L54351 23."

COUNCIL'S STATEMENT OF ISSUE:

On September 23, 1999, Locomotive Engineer Sampson was engaged in switching activities at the east end of Terrace yard. While switching, authority was given to use the switching signal at signal number 1314S and movements were made in conducting several pulls in respect to the make up of their train. During the course of these duties, unbeknownst to the grievor, the switching signal authority was removed by the RTC, in collaboration with the conductor, and in the result the movement passed signal number 1314S without authority.

A subsequent investigation was conducted, and as a result of that investigation, Locomotive Engineer Sampson was assessed thirty-five (35) demerits.

The Brotherhood contends that the discipline was totally unwarranted under the circumstances and must be expunged.

FOR THE COUNCIL:

(SGD.) D. E. BRUMMUND

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

S. MacDougald	– Manager, Labour Relations, Montreal
D. Coughlin	– Consultant

J. Gosse – Transportation Supervisor
 R. Norisette – Manager – Operating Pctces - Champlain

And on behalf of the Council:

D. E. Brummund – Sr. Vice-General Chairman, Edmonton

AWARD OF THE ARBITRATOR

The material does establish, beyond controversy, that the grievor was responsible for proceeding through a stop signal, contrary to CROR rule 429 at Terrace East on September 23, 1999. The incident occurred while Locomotive Engineer Sampson was moving his consist back and forth during switching operations. The switching signal had previously been made permissive on an ongoing basis by Locomotive Engineer Sampson and his conductor obtaining authority from the rail traffic controller.

It does not appear disputed that, unbeknownst to Locomotive Engineer Sampson, as he was still engaged in the process of switching, his conductor, Mr. J.A. Payjack, proceeded into the station office, telephoned the rail traffic controller and surrendered the switching authority on signal no. 1314S. Because the communication between Conductor Payjack and the RTC took place by telephone, there was no opportunity for Locomotive Engineer Sampson to overhear the conversation or otherwise be aware that the switching authority on the signal was being given up. In the result, the rail traffic controller placed the signal in a stop aspect, without any verbal notice to Locomotive Engineer Sampson. Mr. Sampson failed to observe the change in the signal and inadvertently passed it by several car lengths. It is common ground that there was no collision or any meaningful risk of danger in the way the incident unfolded. When the movement passed the signal an alarm alerted the rail traffic controller, who was still in his telephone conversation with Conductor Payjack. Mr. Payjack then immediately contacted the grievor, and the assistant conductor working with him, and the train was stopped with all proper steps being taken to protect the movement, as required by the rules.

The Council's representative stresses that the manner in which the authority over the switching signal was surrendered was such as to effectively create a trap in which Locomotive Engineer Sampson became caught. It does not appear disputed that his movement had gone by the signal quite properly while the switching authority was in effect for that signal, on some six occasions, without incident. It does not appear disputed, as the Council's representative stresses, that safe practice would have involved giving some verbal notice to the locomotive engineer when the authority for the switching signal was about to be surrendered. The Council's representative draws to the Arbitrator's attention a number of other rule alternatives which would have ensured that verbal

communication would have been provided to the locomotive engineer, including CROR rule 566 and rule 571 (ii), although it is conceded that those rules did not have direct application in the case at hand.

The Arbitrator appreciates the concern of the Council. However, considering the merits of this grievance the Arbitrator must accept the submission of the Company to the effect that the grievor had a reasonable opportunity to see the signal after it displayed its stop aspect. It does not appear disputed that the stop was displayed for some two minutes and twenty-one seconds before it was passed by the grievor's movement, and that he was an estimated three hundred feet from it when it was changed. This is not, manifestly, a circumstance where it can be argued that the signal was "dropped in the locomotive engineer's face", with no reasonable opportunity to stop his movement. Normal vigilance should have allowed Locomotive Engineer Sampson to see the change of aspect in the signal and to obey it.

That said, however, it is the Arbitrator's view that the overall circumstance described above does come to bear as a mitigating factor in the case at hand. In the normal course the locomotive engineer could reasonably expect to be given some verbal notice of the surrender of a permissive switching signal, whether by direct advice from another member of his or her crew, or by overhearing communication with the rail traffic controller on a common radio band. There was, in all of the circumstances of the case at hand, an element of surprise which did operate. While it does not excuse the locomotive engineer's ultimate inattention to the signal, it is a mitigating factor. That factor, together with the length and standing of the grievor's disciplinary record, justify a reduction of penalty, in the circumstances. In the Arbitrator's view the assessment of twenty demerits would be appropriate.

The grievance is therefore allowed, in part. The Arbitrator directs that the discipline assessed against Locomotive Engineer Sampson be reduced to twenty demerits for the incident at Terrace East on September 23, 1999.

December 19, 2001

(signed) MICHEL G. PICHER
ARBITRATOR