

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3238
Heard in Montreal, Thursday, 10 January 2002
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)
EX PARTE

DISPUTE:

The assessment of 20 demerits to P.J. Wilson of Jasper, Alberta for violation of CROR Rule 429 when working as a conductor Pilot.

COUNCIL'S STATEMENT OF ISSUE:

P.J. Wilson was called to work as a conductor pilot on a Lorain Rail Grinder operating on the Albreda Subdivision.

While approaching a stop signal at Canoe River East, at approximately 1 mph, Mr. M Wilson instructed the Lorain operator to stop. The consist was placed into emergency but did not stop.

The evidence introduced during the investigation indicated that in addition to an emergency brake application, a clutch had to be engaged to remove the tractive effort from the consist, a fact the Lorain operator was not aware of. Further evidence indicated that the Lorain consist had insufficient operative brakes to meet G01 requirements.

The Union submits that it is the Company's responsibility to ensure that foreign equipment meets operational requirements and that the operators of this equipment are sufficiently trained and knowledgeable regarding its operation. As such, the 20 demerits assessed to Peter Wilson is unwarranted and should be expunged. In the alternative, if the Arbitrator determines that discipline is warranted, 20 demerits is excessive as there are sufficient grounds for mitigation.

The Company disagrees.

FOR THE COUNCIL:

(SGD.) R. HACKL

FOR: GENERAL CHAIRPERSON

There appeared on behalf of the Company:

S. MacDougald	- Manager, Labour Relations, Montreal
R. Morissette	- Manager Operating Practices - Champlain

And on behalf of the Council:

B. R. Boechler	- Vice-General Chairperson, Edmonton
B. J. Henry	- General Chairperson, Edmonton

R. Hackl	- Vice-General Chairperson, Edmonton
R. Thompson	- Local Chairperson, Jasper
T. Carroll	- Local Chairperson, Jasper/P>

AWARD OF THE ARBITRATOR

The record discloses that on July 5, 1999 the grievor worked as a conductor pilot on a train owned by another company, Lorain Maintenance of Way Inc. The Lorain train consisted of a Lorain rail grinder with various pieces of allied equipment, including several rail cars in its consist, operated by Lorain employee Paul Denis.

During the course of operation the Lorain train received an advance clear to stop at mileage 78 of the Albreda Subdivision, between Jasper and Blue River. That indication advised it that it must be prepared to stop two signals later at mileage 82. 1. At mileage 80.3 the Lorain train duly received the ensuing clear to stop indication, again cautioning it to be prepared to stop at mileage 82.1 as the west end of the Canoe River siding.

It appears that as the train reached mileage 82, some one-tenth of a mile from the ultimate stop signal, Pilot Wilson advised Operator Denis that the signal was "just around the corner". It appears that as the Lorain train proceeded at approximately five miles per hour, some six car lengths from the stop signal, both the pilot and operator called the signal as required by CROR rule 34. Under a special instruction to rule 429 the train should have stopped no less than three hundred feet from the stop signal. It continued on, however, travelling at one to two miles per hour as, it appears, a number of Lorain employees entered the cab. It also appears that the maintenance of way foreman responsible for the area advised the grievor and operator that they were cleared to operate onwards to mileage 86. The stop signal had not changed, however, and they continued to approach it.

With the Lorain train some two car lengths, or one hundred feet, away from the stop signal on Conductor Wilson's command to stop the movement Operator Denis applied the emergency air brake. Unusually, that did not stop the movement as the Lorain train's clutch was not disengaged. Only when the operator disengaged the clutch did the train finally come to a stop, some two feet beyond the stop signal.

It is common ground that a violation of rule 429 constitutes a cardinal rules infraction normally deserving of a high degree of discipline. In such cases discipline in the range of thirty to forty demerits, sometimes coupled with a suspension is not uncommon (**CROA** 1479, 2230, 2556 and 2859).

It is true, as stressed by the Council's representative, that the grievor was not familiar with the workings of the Lorain train, and had not been trained to understand the relationship between the emergency braking system and the disengaging of the clutch. That said, however, the evidence does indicate that Pilot Wilson did tolerate a degree of laxity in the manner in which the Lorain train crept ever closer to the stop signal, through the three hundred foot buffer zone established by the special instruction. While it may be true that in the case of another

locomotive the emergency brake application which he directed at the last moment might have stopped the movement short of the signal, the fact remains that he remains responsible for the Loram train venturing so dangerously close.

Moreover, as is evident from the Company's submission, the employer did take into account the unusual circumstances surrounding the Loram equipment in its disciplinary treatment of Conductor Wilson. In effect, it reduced what might otherwise have been a forty demerit penalty to twenty demerits. In the Arbitrator's view the Company's representative is correct in stressing that mitigation has already been taken into account.

For all of the foregoing reasons the Arbitrator can see no reason to disturb the assessment of discipline made by the Company. The grievance must therefore be dismissed.

January 16, 2002

(signed) MICHEL G. PICHER
ARBITRATOR