

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3256

**Heard in Calgary, Wednesday, 15 May 2002
concerning**

CANADIAN PACIFIC RAILWAY

and

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

DISPUTE:

The assessment of 50 demerit marks to Locomotive Engineer S.N. Galambos and his subsequent discharge for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On May 28, 1999, Engineer Galambos' record was debited with 50 demerit marks for: "your failure to ensure that your train was operated in a safe manner and in compliance with the Rules, for your failure to observe posted speed restrictions in the course of your tour of duty between Howell and Shepard, for your failure to have your train sufficiently under control to enable stopping short of a signal indicating STOP, for your failure to initiate a proper emergency broadcast after your train had passed a signal indicating STOP, for your failure to ensure that your train was properly protected subsequent to having passed a signal indicating STOP, for your failure to ensure that your train was given a pull-by inspection after being stopped by an emergency application of brakes, for your failure to ensure that your train had proper authority to proceed after having passed a signal indicating STOP, and for your failure to promptly and properly report the occurrence of your train having passed a signal indicating STOP, resulting in your train being operated at excessive speed, passing Signal 1655 indicating STOP without proper authority and proceeding from the point of stop without proper authority; Train 405/06, 9005 West Howell to Shepard at Shepard East, Mile 165.5 Brooks Subdivision, May 9, 1999." Mr. Galambos was subsequently dismissed for accumulation of demerits under the Brown System of Discipline.

The Council contends that the discipline assessed to Locomotive Engineer Galambos 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 that Locomotive Engineer Calambos be reinstated on terms the Arbitrator considers appropriate.

The Company has declined the Council's request to reinstate Locomotive Engineer Galambos.

FOR THE COUNCIL: FOR THE COMPANY:
(SGD.) D. C. -CURTIS (SGD.) J. COPPING
GENERAL CHAIRMAN FOR: GENERAL MANAGER

There appeared on behalf of the Company:

D. E. Guerin- Labour Relations Officer, Calgary
C. D. Carroll- Director, Labour Relations, Calgary
J. C. Copping - Manager, Labour Relations, Calgary
D. T. Cooke - Manager, Labour Relations, Calgary
C. M. Graham - Labour Relations Officer, Calgary

And on behalf of the Council:

D. Able - Vice-Chairman, Medicine Hat
J. Flegel - Senior Vice-Chairman, Saskatoon
D. C. Curtis - General Chairman, Calgary
M. Lagerway - Local Chairman, Calgary

AWARD OF THE ARBITRATOR

The facts giving rise to the discipline which is the subject of this grievance are related in **CROA 3225**. As related therein, on May 9, 1999 the grievor and his conductor, K.W. Christie, failed to stop at signal 1655 (Shepard East). The Arbitrator is satisfied that the grievor, who then spoke to the rail traffic controller, failed to communicate the infraction against CROR rule 429, and failed to follow all of the ensuing rules requirements which are to be applied in the event of such an emergency. The Arbitrator is driven to the regrettable conclusion that Locomotive Engineer Galambos did attempt to conceal the incident to escape the consequences of his actions. In fact, it was only when Conductor Christie later communicated the incident to a supervisor that the Company was put into a position to undertake an investigation of the facts. The record discloses that after the tour of duty in question Mr. Galambos left the property and went on vacation, making no attempt to report the cardinal rule violation which had occurred.

The only issue in the case at hand is the appropriate measure of discipline, and whether there are circumstances which would justify a reduction of penalty which might involve the reinstatement of Locomotive Engineer Galambos into

employment. In **CROA 3225** the Arbitrator did reduce the penalty assessed against Mr. Christie, in part, because the conductor had only one rules infraction on his prior record, and that he did "come clean" by reporting the incident, albeit belatedly.

Locomotive Engineer Galambos does not present the same compelling mitigating circumstances. As noted above, he initiated the concealment of the incident in his first radio exchange with the rail traffic controller, and never reported the rule 429 violation until it became evident that his conductor had done so separately. At the time of the incident Mr. Galambos had thirty demerits registered on his disciplinary record, the nature of which is far from exemplary. Significantly, he recorded rules violations on four separate occasions in the past. Regrettably the grievor's actions, and his obvious attempt at concealment of the incident, have given the Company cause to question his honesty and to be concerned about the breach in the bond of trust essential to the employment relationship of any person who works in a largely unsupervised setting. There are no compelling mitigating factors which would justify a reduction of the penalty assessed in the case at hand.

For the foregoing reasons the grievance must be dismissed.

May 21, 2002

(signed) MICHEL G. PICHER
ARBITRATOR