

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3266

Heard in Montreal, Wednesday, 12 June, 2002

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

The 45 demerit marks assessed Locomotive Engineer N. Bullen.

EX PARTE STATEMENT OF ISSUE:

On November 12, 2000, Locomotive Engineers P. Kozusko and N. Bullen were assigned to train no. 45 travelling from Ottawa to Toronto.

While stopped at Brockville entraining and detraining passengers, Engineer P. Kozusko was at the controls of the locomotive and Engineer Bullen was on the platform. Following the completion of the station work the locomotive passed signal 1257N1 indicating stop located at the west end of the platform. The incident was reported and an investigation was held. Both engineers were heavily disciplined as a result.

The Brotherhood appeals the discipline assessed to Engineer Bullen who was not on the locomotive at the time of the incident.

FOR THE BROTHERHOOD:

(SGD.) J. R. TOFFLEMIRE
GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

E. J. Houlihan	– Senior Manager, Labour Relations, Montreal
G. Benn	– Officer, Labour Relations, Montreal
G. Selesnic	– Manager, Customer Services

And on behalf of the Brotherhood:

J. R. Tofflemire	– General Chairman, Oakville
M. Grieve	– Local Chairman, Toronto

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that while operating Train No. 45 from Ottawa to Toronto on November 12, 2000 Locomotive Engineers Bullen and Kozusko made a regular scheduled stop at Brockville. As they entered the Brockville station they stopped at the station platform facing signal 1257N1 on the Kingston Subdivision. In accordance with normal procedure, once the passengers had been detrained and entrained, Mr. Bullen got off the locomotive and proceeded to control traffic gates adjacent to the station. It was his function to manually operate the gate to block highway traffic as the train left the station, utilizing a control mechanism located on the pole of signal 1257N1.

The record discloses that by an arrangement between them it was understood that the locomotive engineer who remained aboard, Mr. Kozusko, would ring the bell to indicate to Mr. Bullen that he had received word from the service manager that the passenger car doors were closed and that the train was ready to proceed. When Mr. Kozusko received that instruction from the service manager he rang the bell, signalling Mr. Bullen to press the button to activate the traffic gate, which Mr. Bullen did. Mr. Bullen then climbed onto the locomotive which had been put into motion by Mr. Kozusko. Unfortunately, as the train proceeded forward signal 1257N1 continued to display a stop indication. When Locomotive Engineer Kozusko noticed that switch points lying ahead were lined against him he immediately put the train into an emergency brake application. Emergency broadcasts ensued and the proper procedures were followed until the locomotive engineers ultimately received proper authorization to proceed.

Ultimately Mr. Kozusko was assessed forty-five demerits for the violation of CROR rules 429 and 34. Mr. Bullen was assessed the same discipline for the same infractions. At issue in the instant grievance is whether the measure of discipline against Mr. Bullen is appropriate. The Brotherhood submits that his responsibility was not equal to that of Mr. Kozusko, who apparently has not grieved the forty-five demerits assessed against him.

The submission of the Brotherhood is that at all material times Mr. Bullen was not on the locomotive, that he was in a position where it was impossible for him to see the stop aspect of the signal and where he did not have the ability stop or otherwise control the forward movement of the locomotive which was under the sole charge of Mr. Kozusko. By Mr. Bullen's own account, when he heard the locomotive's bell ringing he assumed that Mr. Kozusko had observed a change in the signal which would allow him to proceed. The Brotherhood submits that in all of the circumstances there was simply no failure of duty on the part of Mr. Bullen which could attract discipline.

The Corporation maintains that in fact there was a violation of rule 34 of the CROR by Mr. Bullen, and that compliance with the rule might have avoided the rule 429 violation. Rule 34 reads, in part, as follows:

34. FIXED SIGNAL RECOGNITION AND COMPLIANCE

(a) The crew on an engine and snow plow foreman must know the indication of each fixed signal (including switches where practicable) before passing it.

(b) Crew Members within physical hearing ranges must communicate to each other, in a clear and audible manner, the indication by name, of each signal they are required to identify. Each signal affecting their train or engine must be called out as soon as it is positively identified, but crew members must watch for and promptly communicate and act on any change of indication which may occur.

In support of its position the Brotherhood submits that there have been decisions of this Office which acknowledge that in certain circumstances a member of a running crew may have no responsibility

for a rules violation committed by another member, or alternatively may have only diminished responsibility. In that regard its representative cites to the Arbitrator **CROA 1887, 2177, 2230 and 2470**.

In considering the instant case I find **CROA 2177** to be somewhat instructive. The following passages reveal the facts and conclusion exonerating a trainman for responsibility in what was then a rule 292 (now 429) violation:

There is no dispute that the train to which Trainman Green was assigned on December 21, 1988 proceeded through a stop indication at Signal 128L, in contravention of Rule 292. The evidence discloses, however, that the train was fully stopped at the signal before proceeding. At that time the grievor was seated on the opposite side of the engine cab from the signal. Because the signal was close to ground level, it was not visible to Trainman Green. It was within sight of the train's engineman, as well as a maintenance employee who was riding in the cab. Both of them mistakenly read the signal as "slow approach", causing them to call that signal to the grievor, who then repeated it in compliance with normal procedure. With that the train proceeded past the signal, at slow speed, in contravention of Rule 292.

In the circumstances, it appears to the Arbitrator that Trainman Green complied with normal procedures, including the requirements of U.C.O.R. Rule 34. While that rule indicates that members of train crews must know the indication of train order signals, it appears clear from the wording of the rule that it contemplates that certain signals may be visible to some crew members and not to others. For that reason the rule requires, in part, that "... all members of engine and train crews must, when practicable, communicate to each other by its name the indication of each signal affecting the movement of their train or engine".

In my view there is a substantial distinction between what transpired in **CROA 2177** and the facts of the case at hand. Firstly, I cannot agree with the Brotherhood's representative that rule 34(a) was intended to apply only to crew members who are aboard an engine. Such rules should, I think, be given a liberal and purposive interpretation consistent with the objectives of safety and security for which they are intended. I prefer the interpretation of the Corporation, which is that the phrase "the crew on an engine" is intended to refer to the individuals of a running crew responsible for the operation of an engine. So interpreted, rule 34(a) fastened upon Mr. Bullen the obligation to know the indication of the signal at the Brockville station before his locomotive passed it. The fact that the signal may have been called earlier, when the train first entered the station, does not remove the responsibility of both of the locomotive engineers responsible for the train from knowing the status of that signal before their train passed it.

As the facts disclose, the grievor committed perhaps the most fundamental error in railroading, by assuming from the ringing of the bell that the signal must be permissive. As is evident from the language of the rule, it was his obligation to know, and not to assume, the aspect of the signal before his locomotive passed it. That he could have done by first arranging for a verification call of the signal with Locomotive Engineer Kozusko before their train was allowed to move forward. It is common ground that they could have used a portable radio, which was at their disposal, for that purpose. Unfortunately, in contrast to the facts disclosed in **CROA 2177**, while Locomotive Engineer Bullen was out of sight of the signal, he made no attempt to obtain called verification of its status, or to otherwise satisfy his own knowledge of its aspect, prior to the forward movement of his train. To that extent, I am satisfied that Mr. Bullen did violate

his obligation under CROR rule 34(a), and that his failure in that regard substantially contributed to the violation of CROR rule 429 by his train.

In the circumstances, the Arbitrator is satisfied that the assessment of forty-five demerits, properly within the range of discipline established for such infractions (**CROA 2356**), was justified in the circumstances and should not be disturbed. For these reasons the grievance must be dismissed.

June 14, 2002

(signed) MICHEL G. PICHER
ARBITRATOR