

**CANADIAN RAILWAY OFFICE OF ARBITRATION**

**CASE NO. 3284**

Heard in Montreal, Wednesday, 11 September 2002

concerning

**VIA RAIL CANADA INC.**

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**EX PARTE**

**DISPUTE:**

Discipline assessed Locomotive Engineer D. Shaver.

**EX PARTE STATEMENT OF ISSUE:**

On April 3, 2001 Locomotive Engineer Shaver was assigned to train 48. At Ottawa, the engine crew was required to wye the train east of the station. As Locomotive Engineer Shaver returned to the station he encountered a stop indication and applied the brakes to no avail.

The rails had been oiled and the movement slid by a stop signal. An earlier train from Montreal had reported the condition to the RTC office which issued no warning of this condition to the crew on train 48 prior to their movement at that location.

The situation was left unattended until the following morning.

The crew attended an investigation into the matter and Locomotive Engineer Shaver received 30 demerits marks.

The Brotherhood appealed the discipline based on the mitigating circumstances evident.

**FOR THE BROTHERHOOD:**

**(SGD.) J. TOFFLEMIRE**  
**GENERAL CHAIRMAN**

There appeared on behalf of the Corporation:

E. J. Houlihan        - Sr. Manager, Labour Relations, Montreal  
G. Benn                - Labour Relations Officer, Montreal  
L. Heller               - Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. Tofflemire         - General Chairman, Oakville

#### **AWARD OF THE ARBITRATOR**

It is not disputed that the grievor violated CROR rule 429 when his movement in the operation of train no. 48, on April 3, 2001 passed signal 19 when returning to the Ottawa station after reversing his train on the wye.

In the normal course the Arbitrator is satisfied that the thirty demerits assessed against the grievor would be within the appropriate range of discipline for such a cardinal rule infraction. There are, however, mitigating circumstances in the case at hand. The evidence discloses that as a result of the servicing of certain switches in the area of signals 17, 19 and 23 of the Alexandria Subdivision at the Ottawa station, a slick of oil was left on a portion of the track. That condition was reported to the rail traffic controller by the crew of another train, train no. 37 which arrived at the Ottawa station earlier on the same day. While that report was apparently forwarded to the roadmaster, no other action was taken, and no advice was given to other train crews, including the crew of train 48 handled by Locomotive Engineer Shaver. In the result, although the persons with supervisory authority over the territory had knowledge of the hazardous condition of the track, it was not communicated to the grievor.

The evidence reflects that Mr. Shaver did operate his train at slightly excessive speeds both on the way to and from the wye, and while moving on the wye itself. The suggestion of the Corporation's representatives is that his rate of speed, and his misjudgement in the application of his brakes as he returned towards the Ottawa station, substantially contributed to the rule violation which occurred. The suggestion is that if the grievor's train had been operated at or below the speed limits, and his brakes had been applied in the normal way, there would have been no rule violation.

Bearing in mind that the Corporation has the burden of proof in this grievance, concerning as it does a matter of

discipline, the Arbitrator finds that submission to be somewhat speculative. While it is true that the grievor's movement did slightly exceed the speed limit as it was returning from the wye towards the Ottawa station, it is not clear that in normal circumstances the brake application administered by the grievor would not have brought his movement to a stop in advance of signal 19. The fact that the movement operated, for some portions of the return move from the wye, at 36 miles per hour when the maximum speed permissible was 30 miles per hour is not, in the Arbitrator's view, conclusive of the fact that the signal would not have been passed even if the train had at all times been moving at 30 mph.

In the Arbitrator's view this is a situation where it can fairly be said that there were two contributing causes to what transpired. No doubt the momentum of the grievor's train, given the slight over-speed at which he operated it on the return from the wye, and the timing of his brake application would have been contributing factors. The condition of the track, however, must also be viewed as a contributing factor which is somewhat mitigating in the circumstances. In coming to that conclusion I note that there is no suggestion that there was any general track condition, such as generalized moisture or ice on the track in the area of the Ottawa station which would have prompted a more cautionary train handling on the part of Locomotive Engineer Shaver. In the circumstances, therefore, while I am satisfied that the grievor was deserving of a reasonably serious measure of discipline, I am compelled to agree with the submission of the Brotherhood's representative to the effect that this is an appropriate case for a reduction of penalty. That conclusion is also, to some degree, influenced by the length and quality of the grievor's prior service and disciplinary record.

For all of the foregoing reasons the Arbitrator directs that the assessment of discipline against the grievor for the violation of CROR rule 429 be reduced to 20 demerits.

September 13, 2002

**(original signed by) MICHEL G. PICHER**  
**ARBITRATOR**