CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4071

Heard in Montreal, Thursday, 15 December 2011

Concerning

BOMBARDIER TRANSPORTATION CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discipline assessed Locomotive Engineer A. Trela for alleged violation of various CROR rules on April 22, 2011.

JOINT STATEMENT OF ISSUE:

On April 22, 2011 the grievor, A. Trela, was involved in an incident while employed as a Qualified Commuter Train Operator (Locomotive Engineer) on GO 919.

Following an investigation held on April 29, 2011 and May 10, 2011, the Company issued two (2) separate and differing letters of dismissal for violation of CROR rules 439, 106, 34, 125 and 35. The first letter issued June 27, 2011 and the second, modified letter June 28, 2011. The discharge was subsequently reduced to a suspension.

The Union appealed the discipline assessed as unwarranted and, in any case, excessive. The Union maintained that the discipline was assessed beyond the time limits stipulated in the collective agreement.

The Union requested the Company reinstate the employee without loss of wages or benefits.

It is the position of the Union that there was no just cause to discipline the grievor, the discipline was untimely and the investigation was not fair and impartial. Alternative, the Union submits that the penalty was excessive in all of the circumstances.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) G. MACPHERSON	**(SGD.) D. MACHELL**
GENERAL CHAIRMAN	**GENERAL MANAGER**

There appeared on behalf of the Company:

M. Horvat	– Counsel, Toronto
A. Brown	– Manager, Human Resources, Toronto
D. Machell	– General Manager, Toronto
S. Seth	– Supervisor, Human Resources, Toronto

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Toronto
G. MacPherson	– General Chairman, Toronto
A. Trela	– Grievor

AWARD OF THE ARBITRATOR

The Union raises a preliminary objection with respect to the timeliness of the Company's response to the grievance. It invokes article 9.1(j) of the collective agreement which requires that the Company must advise an employee in writing of its decision on discipline "… within twenty days of the date the investigation is completed." It does not appear disputed that in the instant case the grievor was advised of his discipline only forty-seven days after the completion of his last investigation statement. That statement was taken on May 10, 2011 and discipline was assessed on June 27, 2011.

The Company submits that the article in question cannot apply in the case at hand. Firstly, it cites the complexity of the investigation which involved consultation with CN and required further consideration well beyond the conclusion of the final investigatory statement. Additionally, it argues that as the Union requested an extension of time limits for the presentation of the grievance, it must be taken to have waived any objection to time limit violations on the part of the Company.

Given the disposition of this grievance on its merits, the Arbitrator need not resolve this dispute. If it were necessary to do so, however, I would be compelled to conclude that the Union's position is correct, and that the Company forfeited its right to discipline the grievor by reason of having missed the time limits provided.

With respect to the merits, the Arbitrator can find no basis for the assessment of discipline against the grievor. It is common ground that as he approached the Jarvis Street Ladder on his way into Union Station in Toronto, Locomotive Engineer Trela found himself in unfamiliar territory. His train was then being directed, at slow speed, over a complex of tracks leading to the station platform. It is common ground that a point in time when his conductor was occupied with a passenger distress call, the grievor allowed his movement to pass signal 3333ND which governs the CN north and south connecting tracks. As it happens, that signal was located on the left side of the track on which the grievor was moving. He therefore concluded that it was not the signal which governed his track.

The grievor's perception is not unreasonable. As a general rule, fixed signals are to be located above or to the right of the track to which they apply. That is reflected in CROR rule 401 which reads as follows:

> **401 Location**
>
> Wherever practicable, fixed signals other than switches will be located above, or to the right of, the track they govern. Where circumstances require that signals be otherwise placed, such conditions will be indicated by GBO or special instructions.
>
> EXCEPTION: A block or interlocking signal that is required to be to the left of the track it governs need not be indicated by GBO or special instructions, provided that such location does not place the signal to the right of another signalled track.

Given the wording of the above rule, the grievor was entitled to believe that the signal which he observed as indicating stop did not apply to his track, unless there was a GBO or special instruction to the contrary. It is common ground that no such special instruction or GBO in fact existed. It would appear that it is only by word of mouth that some of the operating employees working in and around Union Station are aware that signal 3333ND governs the track which in fact is situated to the right of it, namely the track upon which the grievor was moving.

In the Arbitrator's view, the grievor proceeded reasonably, and in accordance with the expectations that would be generated by the operating rules, including CROR rule 401, reproduced above. How, then, can he be faulted for misunderstanding the location of his signal when it was located in a manner inconsistent with rule 401 and he could have reference to no special instructions or GBO information to tell him otherwise? I do not see how he can.

For the purposes of clarity, I am also satisfied that there was no violation of the rules by the fact that the grievor did not broadcast an emergency call. Firstly, when the incident occurred he was entirely unaware that he had violated any rule, for the reasons touched upon above. Secondly, he was almost immediately given clearance to occupy the track where his train had stopped, so that the need for an emergency call and flagging was immediately obviated.

The grievance must therefore be allowed. The Arbitrator directs that suspension assessed against the grievor be stricken from his record and that he be compensated for all wages and benefits correspondingly lost. His disciplinary record shall contain no reference to the incident of April 22, 2011 in the operation of GO Train 919.

December 19, 2011

(signed) MICHEL G. PICHER
ARBITRATOR