

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION**

**CASE NO. 3968**

Heard in Montreal, Tuesday, 11 January 2011

Concerning

**BOMBARDIER TRANSPORT LTD.**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The 2 day suspension of Locomotive Engineer Simon Martin.

**JOINT STATEMENT OF ISSUE:**

On April 5, 2010, Mr. Martin was involved in an incident while employed as a Train Operator (Conductor) on the Uxbridge Subdivision.

Following an investigation and statement held on April 15, 2010, the Company issued a letter to the grievor dated April 22, 2010 informing him that he was assessed a 2 day suspension without pay, citing the following reasons: "You did indeed fail to comply with Rule 136."

The Union appealed the discipline assessed on the basis that the Company had failed to establish reasonable grounds for its assessment.

The Union requested the Company remove the discipline assessed from the grievor's record and make the employee whole for wages lost.

The Company declined the Union's request.

**FOR THE UNION:**

**FOR THE COMPANY:**

**(SGD.) G. MacPHERSON**  
**GENERAL CHAIRMAN**

**(SGD.) A. BROWN**  
**MANAGER, HUMAN RESOURCES**

There appeared on behalf of the Company:

M. Horvat – Counsel, Montreal  
E. Salem – Director Operations, Toronto  
A. Brown – Manager, Human Resources, Mississauga  
N. Lefebvre – Human Resources Advisor, Mississauga

There appeared on behalf of the Union:

D. Ellickson – Counsel, Toronto  
G. MacPherson – General Chairman, Toronto  
S. Martin – Grievor

**AWARD OF THE ARBITRATOR**

The material before the Arbitrator confirms that the grievor erroneously entered an incorrect clearance number which was communicated to him by radio by the rail traffic controller. The clearance number related by the RTC was number 705 whereas the grievor recorded number 707, the number which he stated in his radio confirmation reply to the RTC. Significantly, the rail traffic controller did not catch the error and simply stated "Okay, ah, Item 12 complete 07:14 WRA. Over." As a result, the grievor was unaware that he had misheard and mis-recorded the clearance number given to him.

It appears that he was not made aware of that error until some twenty minutes later when the RTC communicated to him, in part, that clearance number 705 was superseded. The grievor then indicated to the RTC that he had a confirmed clearance number of 707, to which the RTC replied that it should have been 705. To make matters absolutely clear, Mr. Martin stated to the rail traffic controller "We repeated AH 707 you say correct repeat. over." In other words, he made it clear to the rail traffic controller that the latter had confirmed what was in fact an error in transmission. Finally the rail traffic controller said "Nothing I can do about that it should have been 705 sorry."

The issue is whether the grievor should have been assessed a two day suspension, as he was by the Company. The thrust of the Company's position is that the initial transmission from the rail traffic controller was clear and audible, and that the grievor erred in not properly writing down the number 705 when he in fact recorded the incorrect number 707. The Arbitrator has some difficulty with the Company's view. The very purpose of repeating radio transmissions is to confirm that the proper order has been received. The grievor, following correct procedures, repeated back to the rail traffic controller what he had thought he had heard, being the number 707. For reasons he best appreciates, the rail traffic controller then confirmed the number 707 as being correct. I find it difficult to conclude, in the light of that exchange, that the grievor should bear entire responsibility, up to and including a two day suspension, for having mis-recorded the initial transmission from the rail traffic controller. The fact of misunderstanding a transmission is itself not unusual, and is obviously at the very root of the reason for requiring running trades crew members to repeat orders communicated to them by radio by a rail traffic controller.

At most, in the Arbitrator's view, it is arguable that the grievor did not pay proper attention to what the Company, on a replay of the radio transmission, qualifies as a clear iteration of the number 705 by the rail traffic controller. In my view that error would merit, at most, a written reprimand.

The grievance is therefore allowed, in part. The Arbitrator directs that the discipline assessed against the grievor be revised to record a written reprimand, that the two day suspension be struck from his record and that he be compensated wages and benefits lost, accordingly.

January 17, 2011

**(SIGNED) MICHEL G. PICHER**  
ARBITRATOR