

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

CASE NO. 4079

Heard in Montreal, Thursday, 12 January 2012

Concerning

BOMBARDIER TRANSPORTATION CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

16 day suspension assessed Locomotive Engineer R. Ritchie.

JOINT STATEMENT OF ISSUE:

On August 10, 2011, Mr. Ritchie was involved in an incident while employed as a Qualified Train Operator (Locomotive Engineer) on GO 886.

Following an investigation and statement held on August 16, 2011, the Company issued a letter to the grievor dated August 26, 2011, informing him that he would be suspended from work for 16 days without pay citing the following reasons: "As a result of this investigation it has been determined that, by confirming the correctness of the RTC's repeat when in fact the RTC's repeat was incorrect, you were found to be in violation of CROR Rule 85(c)."

The Union appealed the suspension on the grounds that it was excessive and inappropriate and requested that it be reduced to a level that better reflected the circumstances of the incident.

The Company declined the Union's request.

FOR THE UNION:
(SGD.) G. MACPHERSON
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.) A. BROWN
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

M. Horvat – Counsel, Toronto
A. Brown – Manager, Human Resources, Toronto
D. Mitchell – General Manager Operations, Toronto

There appeared on behalf of the Union:

M. Church – Counsel, Toronto
G. MacPherson – General Chairman, Toronto

AWARD OF THE ARBITRATOR

The only issue in this grievance is the appropriate measure of discipline. The facts are not contested. The record discloses that the grievor was the QCTO, along with his mate CRO M. Konishi, operating GO assignment 868 on the Uxbridge Subdivision on August 10, 2011. It appears that as his train was approaching a station Mr. Konishi handed the radio to Mr. Ritchie who then received a message from the Rail Traffic Controller. It is not disputed that the Rail Traffic Controller incorrectly repeated that GO 868 had left mileage 41.3. In fact the correct mileage which he should have stated was mileage 52 on the Uxbridge Subdivision. The grievor incorrectly confirmed the RTC's statement as correct. It appears that at that very moment Mr. Konishi recognized the error which had been committed both by the RTC and by Mr. Ritchie, which prompted the grievor to immediately correct the RTC by advising him that the train was in fact at mileage 52. It does not appear disputed that the exchange in question occurred while the grievor's train was entering a station, in the process of coming to a full stop.

The Arbitrator is satisfied that the Company is correct in its judgement that the grievor violated the requirements of CROR 85 (c) and (d) which provide as follows:

(c) When a track release report is transmitted to the RTC the RTC must, as it is transmitted, verify the movement identification and record the location and time into the computer assisted system. If correct the employee controlling the engine of a movement must confirm correctness of the report to the RTC.

(d) If an errant report results in the movement not having authority to occupy the main track, the movement must be stopped and an emergency radio broadcast initiated on the standby channel and then to the RTC and protection as required by Rule 35 initiated.

Following the investigation the grievor was assessed a sixteen day suspension. That in fact was the time he was held out of service pending the investigation and the Company's decision. The Union maintains that the assessment of a sixteen day suspension is excessive in all of the circumstances.

The Arbitrator is compelled to agree. While it is true that the grievor did violate the rule as alleged, it is important to view the facts in their actual context. As stressed by counsel for the Union, the entire incident occupied mere seconds. At his workmate's prompting Mr. Ritchie immediately communicated back to the RTC the error which had been committed. This is not, in other words, a circumstance where an error caused the grievor's train to be in unauthorized territory for any substantial period of time. Bearing in mind the requirements of Rule 85(d), the grievor's train was in fact stopping, and did stop. Given the correction communicated to the RTC almost immediately, the substantive objective of immediate Rule 35 protection being extended to the grievor's movement was in fact achieved.

The Arbitrator appreciates the importance of clear communication, particularly in the operation of a commuter train over dark territory, as occurred in the instant case. That said, however, the facts do not, in my view, sustain a suspension of the gravity assessed by the Company. In my view a five day suspension would have been sufficiently onerous to bring home to the grievor the importance of exercising great care in listening to and confirming messages received from a Rail Traffic Controller.

For these reasons the grievance is allowed, in part. The Arbitrator directs that the suspension recorded against Mr. Ritchie be reduced to five days, with the grievor to be compensated for all wages and benefits accordingly.

January 16, 2012

(signed) MICHEL G. PICHER
ARBITRATOR