

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

CASE NO. 3967

Heard in Montreal, Tuesday, 11 January 2011

Concerning

BOMBARDIER TRANSPORT LTD.

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

The 30 day suspension of Locomotive Engineer Patrick Quinlan.

UNION'S STATEMENT OF ISSUE:

On October 7, 2009, Mr. Quinlan was involved in an incident while employed as a Qualified Train Operator (Locomotive Engineer) on Train 492 on the Oakville Subdivision.

Following an investigation and statement held on October 16, 2009, the Company issued a letter to the grievor dated October 28, 2009 informing him that he was assessed a 30 day suspension without pay, citing the following reasons: "You failed to adequately control your train, resulting in an emergency application of the train brakes to prevent passing a red flag."

The Union appealed the discipline assessed as unwarranted and in any case excessive. The Union requested that the Company reduce the amount of discipline assessed.

The Company declined the Union's request, maintaining that the discipline assessed was appropriate.

FOR THE UNION:

(SGD.) G. MacPHERSON
GENERAL CHAIRMAN

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
P. Quinlan	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator discloses that while the grievor was operating train 492 on October 7, 2009 he and his conductor were under operating orders which required them to obtain permission before entering a rule 42 foreman's limits at mile 23 on the Oakville Subdivision. It appears that the grievor and his conductor intended to call the foreman to obtain clearance into his limits but in fact did not do so. As they were one mile from the foreman's limits, at the mile 24 marker, Conductor Todd Lawrie informed Locomotive Engineer Quinlan that he had not yet talked to the foreman to obtain permission to enter his working limits. The grievor then put his train's throttle to the idle position and initiated a full brake application, a measure which he was satisfied would stop his train by mile 23. However, for reasons he best appreciates, Conductor Lawrie, without consulting with the grievor, had already put the train into emergency braking mode. Appropriate emergency calls and flagging were then complied with and following a delay of approximately nine minutes the train proceeded. Following a subsequent disciplinary investigation the Company assessed a five day suspension against Mr. Lawrie and a thirty day suspension against the grievor.

The sole issue is the appropriate measure of discipline. It is not disputed that the grievor was deserving of discipline. The Union submits, however, that he should have been assessed the same five day suspension as was meted out against Conductor Lawrie, the person who actually applied the emergency brakes.

The Company submits that there is a substantial distinction between the grievor and Mr. Lawrie, having particular regard to the grievor's prior disciplinary record. Its counsel notes that, unlike Mr. Lawrie, the grievor has two prior suspensions on his disciplinary record. He incurred a ten day suspension in August of 2008, a penalty which was subsequently reduced to a seven day suspension. He then recorded a further suspension of one day on February 6, 2009. The ten day suspension was for a violation of rule 42. While the Company acknowledges that the grievor was not expressly disciplined for having violated rule 42, its counsel notes that the facts as disclosed would indicate a violation of that rule. He submits that on the whole, and having particular regard to the grievor's disciplinary record, it was not inappropriate for the Company to assess a thirty day suspension.

In the Arbitrator's view, while it is true that the grievor's prior record would distinguish him from his conductor, there are some mitigating factors to consider. Among them is the fact that it was not the grievor himself who resorted to the emergency brake application, the event which triggered the Company's investigation.

In the circumstances, given the length of the grievor's service in the industry, I am satisfied that a suspension was justified, albeit in a lesser quantity.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor's suspension for the events of October 7, 2009 shall be adjusted to a fifteen day suspension, with the grievor to be compensated for the difference in wages and benefits.

January 17, 2011

(signed) MICHEL G. PICHER
ARBITRATOR