

IN THE MATTER OF AN AD HOC ARBITRATION
BETWEEN
TEAMSTERS CANADA RAIL CONFERENCE (TCRC)

And
CANADIAN PACIFIC RAILWAY COMPANY (CP)

DISPUTE:

The 40-day suspension assessed to Locomotive Engineer Justin Lazzarotto, of Revelstoke, BC.

JOINT STATEMENT OF ISSUE:

Engineer Lazzarotto was assessed with a forty-day suspension described as:

Failing to control your movement, Train 866-287, at controlled location Griffith East resulting in signal 712C displaying "Stop" being passed without authority, on October 7th, 2019, Mountain Subdivision. This is a violation of Rule Book for T&E Employees

Section 2 - General, item 2.2(a), item 2.2 (c),(v)(vi),(xii) and item 2.3 (a),(b),(c),(d), Section 6 - Signals, Item 6.5 Fixed Signal Recognition and Compliance and Section 19 - Block and Interlocking Signals, Item 19.3, Rule 439.

The parties agree that CROA rules apply including item 14 of the Memorandum of Agreement Establishing the CROA&DR.

UNION'S POSITION:

On April 3, 2020, the Union properly submitted a Step 2 grievance regarding the Company's decision to impose discipline on Engineer Lazzarotto.

The Union contends the Company utilized heavy handed discipline when assessing a 40-day suspension to Locomotive Engineer Lazzarotto. The Union asserts the Company failed to consider the mitigating circumstances that contributed to the events that took place. Specifically, within the investigation, Mr. Lazzarotto made it clear he thought he was operating under an Advanced Clear to Stop signal when he brought his train to a controlled stop and went passed the signal at Griffith East by half a car.

The Company states within the 104, "Suspension includes time served Held Out of Service from Oct 17, 2019, through to November 25, 2019." Engineer Lazzarotto was in fact removed from service on October 7th which makes the suspension a 50-day suspension not a 40-day suspension. The Union requests Mr. Lazzarotto immediately be compensated for the additional 10-days held off in sum of \$3,659.85.

The Union asserts that the Company piled on rules violations to justify the extreme discipline assessed to Engineer Lazzarotto. There is no evidence to support intent on the part of Mr. Lazzarotto to circumvent the broad application of rules listed; A review of summary of alleged rules violated in fact demonstrates Mr. Lazzarotto was compliant in several facets of rules listed,

specifically Rule Book for T&E Employees Section 2.2 (a)(c)(v)(vi) and (xii), Item 2.3 (a)(b)(c)and(d).

The Union submits that even though Engineer Lazzarotto was incorrect in what he thought was an Advanced Clear to Stop signal approaching Griffith, serving him with such punitive discipline as a 40-day suspension is egregious and excessive. The Union asserts that the investigation, the information, and education presented during it have more than met the needs of the Company to address this situation. The assessment of discipline by the Company that amounts to an excessive fine, provides no additional prohibitive value in this instance.

The Union seeks an order that the forty-day suspension be expunged from Engineer Lazzarotto's work record and that he be made whole for lost wages, with interest, as well as any lost benefits in relation to his time withheld from service. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

COMPANY POSITION:

The Company disagrees and denies the Union's request.

The Company maintains the Grievor's culpability was established following the fair and impartial investigation. Discipline was determined following a review of all pertinent factors including all mitigating and aggravating factors raised by the Union.

The Union claims that discipline assessed was excessive. The Company maintains this assessment of discipline was appropriate and warranted for a violation of CROR Rule 439. Simply put, the Company cannot put a price on safety. The mitigating factors identified by the Union are the very reasons a Locomotive Engineer needs vigilant.

The Union's suggestion that the Company is attempting to exaggerate its position through rules violated is baseless. The Grievor's infraction was encompassed within the rules stated on the Form 104.

The Union's suggestion that there was a violation of Article 39.06, as the Grievor was withheld from service and in their opinion should be remunerated, is incorrect. The Company maintains the Grievor was found culpable and was properly held from service in the circumstances. Further, in assessing the discipline, the Company elected to incorporate some of the time served. There is no provision in the Collective Agreement nor in arbitral jurisprudence that requires all time held from service to be incorporated into a suspension as time served.

The Company maintains the discipline assessed was appropriate, warranted and just in all the circumstances. Accordingly, the Company cannot see a reason to disturb the discipline assessed and requests the Arbitrator be drawn to the same conclusion.

FOR THE UNION

Signed
Greg Lawrenson
General Chairman LE
TCRC
March 23, 2023

FOR THE COMPANY

Signed
Lauren McGinley
Assistant Director, Labour Relations
CP

Hearing: By video conference. April 13, 2023

APPEARING FOR THE UNION:

Ken Stuebing, Counsel, Caley Wray
Greg Lawrenson, General Chair
Harvey Makoski, Senior Vice General Chair
Cam Murtagh, Local Chair
Justin Lazzarotto, Grievor

APPEARING FOR THE COMPANY:

Poonam Sheemar, Manager Labour Relations
Francine Billings, Assistant Director Labour Relations
Simone Scott, Labour Relations Officer

AWARD OF THE ARBITRATOR

JURISDICTION

[1] This is an Ad Hoc Expedited Arbitration pursuant the Grievance Reduction Initiative Agreement of May 30, 2018 and Letter of Agreement dated September 7, 2021 between the parties. The protocols entered into by the parties provided for submission of detailed briefs, filed and exchanged in advance of the hearing. At the hearing, the parties reviewed the documentary evidence and made final argument. Awards, with brief written reasons, are to be issued within thirty days of the hearing. The parties agree I have all the powers of an Arbitrator pursuant to Section 60 of the Canada Labour Code.

BACKGROUND

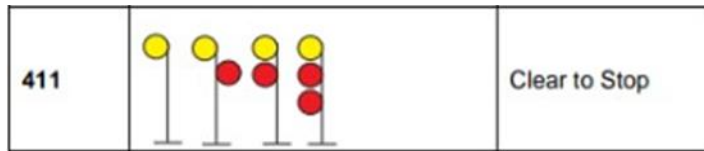
[2] The Grievor, Justin Lazzarotto, entered the Company's service November 2011. He qualified as a Conductor later that year. He was subsequently promoted to Locomotive Engineer (LE) in March 2018.

[3] At the time of this issuance of discipline, the Grievor had been working as LE on the Mountain Subdivision in Revelstoke, BC for 1.5 years. He had approximately 7.11 years' of service and had received discipline on two previous occasions (2 suspensions) during his career.

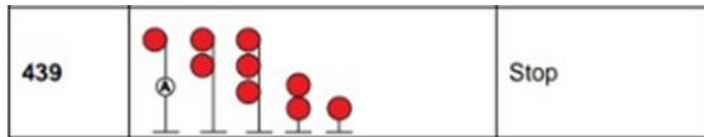
[4] While proceeding eastward on the Mountain Subdivision at Griffith West, the movement passed signal 724C which was displaying a Clear to Stop indication. However, the Grievor was unable to stop his train short of signal 712C Griffith East and therefore ran by the Stop signal without authority about half a locomotive length.

COMPANY POSITION

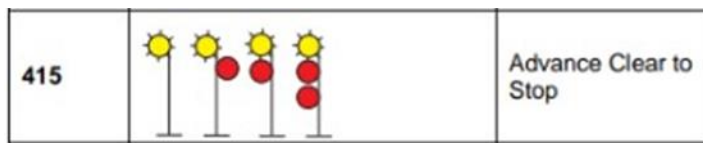
[5] The Company maintains that while proceeding eastward on the Mountain Subdivision at Griffith West, the movement passed signal 724C which was displaying a Clear to Stop indication. The crew verbally communicated the Clear to Stop signal in the cab of lead locomotive. By rule, the Clear to Stop signal required the Grievor to proceed and be fully prepared to Stop at next signal. The Grievor was to bring the movement to a controlled stop prior to approaching the Stop signal ahead.



[6] However, around the corner and approaching Griffith East, the crew saw a Stop signal – also referred to as a red signal or red board.



[7] The Company maintains that the Grievor mistook the preceding Clear to Stop signal and erroneously assumed that he was operating on an Advanced Clear to Stop signal. By rule, an Advanced Clear to Stop – which was not the indication displayed – would have required the Grievor to “proceed, prepared to Stop at second signal”.



[8] When the Grievor saw the red signal he claimed he thought the signal had dropped on him and brought the movement to a controlled stop. The movement was unable to stop short of signal 712C Griffith East and therefore ran by the Stop signal without authority about half a locomotive, creating an emergent condition and a violation of CROR Rule 439 Stop.

[9] Following an investigation the Grievor was assessed with a 40 day suspension for failing to control Train 866-287, at controlled location Griffith East resulting in signal 712C displaying "Stop" being passed without authority, on October 7th, 2019, Mountain Subdivision.

[10] The Company submits that rather than relying on the facts of the situation, he was relying on an assumption. The above clearly confirms the Grievor did not operate his train as if he was operating under a Clear to Stop indication. He ought to have handled his train with intent to bring it to a controlled stop short of the next signal.

[11] CP says the Grievor communicated a Clear to Stop but he lacked vigilance as he did not know and comply with the indication – as per the rule – and erroneously assumed he was on an Advanced Clear to Stop, violating Section 6 Signals, 6.5 Fixed Signal Recognition which provides:

Recognition

All crew members on the controlling engine and snow plow foremen must know the indication of each fixed signal before passing it.

Communication

Crew members within physical hearing range must clearly communicate the indication by name of each fixed signal they are required to identify as soon as it is positively identified.

[12] The Company maintains that the Grievor was familiar with the physical characteristics of the Mountain Subdivision as it pertained to his duties as LE. He was also aware of and fully understood his position as LE and understood the requirement to remain vigilant and aware of his

situation at all times. Additionally, the investigation confirmed the crew failed to place their train into Emergency as soon as they observed the red signal around the corner and approaching Griffith East. At question and answer 46, when asked why he did not put his train into Emergency, the Grievor provided a rather impractical explanation.

Q46 Why did you not put your train into Emergency when you came around the corner and saw the red signal at 712C Griffith East?

A I thought I had an advanced clear to stop at Griffith West and the signal had dropped on us.

[13] The Company maintains the Grievor's inaction is an aggravating factor. It says he understood the serious consequences that can occur by passing a Stop signal without authority, yet failed to place his train into Emergency, failed to transmit a required emergency radio broadcast and did not notify the RTC as soon as possible. Passing a Stop signal without authority is considered a very grave incident. It is one of the most egregious violations that can occur in the railway industry and can have catastrophic consequences such as train or equipment collisions, death and mass destruction of equipment, private, public or company property.

[14] CP submits that the Grievor knew he had been following a train ahead. While it is fortunate that there was no damage or injury, the Grievor was clearly following another train and the reason the signal would have been red is undoubtedly that the other train in question was still within the next block.

UNION POSITION

[15] The Union submits that Locomotive Engineer Lazzarotto had neither negligent nor nefarious motivations and simply made a mistake as to what signal authority he was working under approaching Griffith East. Locomotive Engineer Lazzarotto and Conductor Howe communicated clear to stop at Griffith West.

[16] Mr. Lazzarotto unfortunately was operating under the belief they had an advanced clear to stop at Griffith West and the stop signal had dropped on them and he took immediate measures to bring the train to a controlled stop. In this case there was no damage and no injuries. While technically a violation, the Union respectfully submits that there is a distinct difference between this crew's passing a stop signal by a mere half of a locomotive and more significant Rule 439 violations reviewed in the railway jurisprudence.

[17] The Union submits that, on the spectrum of possible incidents, this is on the mild side of Rule 439 violations. However, in its Form 104, the Union says the Company has opted to exaggerate its position with reference to multiple rules. There is no evidentiary basis to conclude that Mr. Lazzarotto circumvented the broad application of all of the rules listed. A review of summary of alleged rules violated in fact demonstrates the Grievor was compliant in several facets of rules listed. Several rules cited by the Company have no application to this incident.

[18] The Union argues that on the whole, by no means is Mr. Lazzarotto seen to have turned a blind eye to the requirements of the CROR or the proper procedures on October 7, 2019. By no means does the evidence reflect any attempts to circumvent or disregard proper safe work procedures on the Grievor's part that should attract discipline, let alone a 40 (plus 10) day suspension. This suspension is unduly harsh and punitive in view of his otherwise safety-minded and conscientious work performance on October 7, 2019. This was Mr. Lazzarotto's first Rule 439 incident in his career, and first "major" rules in fraction as a Locomotive Engineer.

[19] The Union argues that in all of the circumstances, there is no justification for assessing a 40 day (plus 10 additional days) suspension for this infraction when, as a rule, the Company has regularly assessed 30 days or less for employees' first career 439 violations.

ANALYSIS AND DECISION

[20] The Grievor, entered the Company's service November 2011. His discipline record indicates two previous suspensions. A five day suspension for falling asleep while on duty on June 19th, 2018 while working at Golden BC. A seven day suspension for throwing a switch under your movement, in Golden November 25, 2014.

[21] While I did not receive the details of the two previous disciplinary infractions they give rise to concern for the possibility of inattention and lack of situational awareness in a safety critical position. In this case I find the foundation of the incident is indicated in the Grievor's statement providing:

Q35 Referencing Appendix 3, copy of initial Incident report from Jordan Howe, it states (in part): "Clear to stop at Griffith west, Engineer and myself communicated this is the cab as we passed it."

Is this correct?

A That's correct

Q36 Did you and conductor Howe communicate Clear to stop at Griffith West as described in Conductor Howe's initial incident report?

A Yes

Q37 Can you please explain how you were 100% sure it was advance clear to stop, when yourself and conductor Howe communicated Clear to stop as you passed the West signal at Griffith proceeding Eastward?

A We called clear to stop and I set my counter for the controlled location to remind me that we could do 25 MPH when clear, I thought we were on advanced clear to stop and was preparing to get the train back up to 25MPH.

[22] In the communication above the Grievor acknowledged communicating clear to stop when he actually thought it was advanced clear to stop. I find this response alarming. Safety depends on the professionalism of the required exchanges. Repeating a "clear to stop" while thinking "advanced clear to stop", in my opinion, is inexcusable in such exchanges.

[23] The Union submitted that, on the spectrum of possible incidents, this is on the mild side of Rule 439 violations. I disagree. The Grievor was aware he was following another train. He assumed an advanced clear to stop but said nothing to the Conductor. His explanation is illogical at best.

[24] In CROA 4320 Arbitrator Picher upheld the dismissal of a Grievor for a second Rule 439 violation as well as a poor discipline record. Arbitrator Picher stated:

On the whole, there can be little doubt but that the Grievor was clearly at fault and that by reason of his inattention he engaged in a Cardinal rule violation by violating the stop indication at signal 1783-1. During the course of his disciplinary investigation Mr. Bugoy stated that he did not in fact expect to encounter a stop signal, notwithstanding the prior clear to stop indication signals he had received, including, an advanced clear to stop on at signal 1757 and a clear to stop signal at 1769. On the whole of the evidence, I am

compelled to conclude that the rule violation committed by the Grievor was avoidable and was the result of his own wrong assumptions and inattention.

[25] In CROA 3745 Arbitrator Moreau addressed an illogical explanation and upheld a dismissal for a Rule 439 violation of a Grievor with 24 years of service. Arbitrator Moreau stated:

What is of concern, however, besides the four and one-half minute delay in reporting the incident, is the claim by the Grievor at his investigation that he failed to initiate an immediate emergency call to the RTC because he was in “shock”. There is no sense of that in the Grievor’s voice at the time he reported the incident and it strikes me as a convenient after-the-fact excuse to justify his otherwise reckless behaviour, particularly given his lengthy experience as a locomotive engineer.

[26] I recognize the impact of a 50 day suspension on the Grievor and his family. The Grievor had received a 5 and 7 day suspension in the past with no apparent effect. At the time of the incident the Grievor had approximately 7 years’ of service and had received disciplinary suspension on two previous occasions during his career. He knew or ought to have known the potential for increased suspension time. In fact, the Grievor’s actions could have resulted in dismissal.

[27] In view of all of the foregoing the Grievance is dismissed.

Dated in Niagara-on the-Lake, this, 6th, day of June 2023.

A handwritten signature in black ink, appearing to read "Tom Hodges". The signature is written in a cursive, flowing style.

Tom Hodges
Arbitrator