CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3189

Heard in Montreal, Tuesday, 13 March 2001

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

The discharge of Locomotive Engineers J. Strachan and D. Simpson.

BROTHERHOOD'S STATEMENT OF ISSUE:

On the tenth of August 2000, both of the aforementioned locomotive engineers were assigned to train 53 travelling from Montreal to Toronto.

At Brockem, Engineer Simpson and Engineer Strachan were engaged in conversation, were momentarily distracted and the movement exceeded the speed limit through a crossover. The incident was later reported and an investigation was held.

Both engineers openly admitted to their error in judgement. They were candid during the investigation regarding the functioning of the train brakes, the slowing of the train and willingly answered all questions of the events leading up to the emergency brake application, the crossover at Brockem and the decision not to report the incident.

They did not deny any rule violations yet they were both discharged by the Corporation.

The Brotherhood appealed that the penalty assessed was too severe. The Corporation did not respond to the appeal.

CORPORATION'S STATEMENT OF ISSUE:

On August 10, 2000 Mr. Strachan and Mr. Simpson were the locomotive engineers operating train no. 53 from Montreal to Toronto.

At Brockem Mr. Strachan and Mr. Simpson failed to obey two signals and placed the train in an emergency brake application. Train no. 53 then operated through a mainline crossover at approximately 75 miles per hour when the permitted speed was 45 miles per hour.

Mr. Strachan and Mr. Simpson attempted to conceal the incident by violating additional rules governing emergency radio broadcasts, brake application, train inspection and notification of the RTC. The incident was only discovered when an employee advised an operations officer of a problem on train no. 53.

Train no. 53 damaged the mainline crossover and the damage posed a threat of derailment.

After an investigation, Mr. Strachan and Mr. Simpson were dismissed. The Brotherhood grieved the dismissals. The Corporation denied their grievances.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) J. TOFFLEMIRE	**(SGD.) E. J. HOULIHAN**
GENERAL CHAIRMAN	**FOR: DIRECTOR, LABOUR RELATIONS**

There appeared on behalf of the Corporation:

E. J. Houlihan	– Senior Manager, Labour Relations, Montreal
B. E. Woods	– Director, Labour Relations, Montreal
M. Bastien	– Labour Relations Officer, Montreal
M. Lamothe	– Senior Officer, Operations & Operating Procedures

And on behalf of the Brotherhood:

S. Chamberlain	– Counsel, Ottawa
J. Tofflemire	– General Chairman, Oakville
G. Hallé	– Canadian Director, Ottawa
R. Dyon	– General Chairman, CN Lines Central, Montreal
R. Leclerc	– General Chairman, CN Lines East, Grand-Mère
A. Hannula	– Vice-Local Chairman, Toronto
R. Theriault	– Local Chairman, Ottawa
E. McKinnon	– Local Chairman, Montreal
S. Mitchell	– Vice-Chairman, Montreal
C. Smith	– Local Chairman, Moncton
P. Vickers	– Vice-General Chairman, CN Central Lines
J. Strachan	– Grievor
D. Simpson	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator plainly reveals a series of serious errors committed by the grievors in the operation of train no. 53 travelling from Montreal to Toronto on August 10, 2000. It is common ground that as train no. 53 proceeded westbound on the south track of the Kingston Subdivision near Brockem, when Mr. Strachan was the operating locomotive engineer and Mr. Simpson was the in-charge locomotive engineer, they failed to pay sufficient attention to the speed of their train in relation to signals in anticipation of approaching the main line crossover which would take them over to the north track. As their train approached signal 1163S, travelling in excess of ninety miles per hour, that signal displayed a “clear to limited” message, the effect of which is to require their train not to exceed forty-five miles per hour as it approached the next signal. That signal, referred to as the home signal, indicated “limited to clear”, a signal that would require train 53 to operate through the main line crossover at not more than forty-five miles per hour.

The evidence of the grievors is that after they passed the initial signal they became involved in a relatively emotional conversation concerning the terminal illness of Locomotive Engineer Strachan’s mother, and failed to pay sufficient attention to the speed of their movement as they approached the crossover. Upon entering the approach area of the crossover Locomotive Engineer Strachan realized the situation and made an emergency brake application. Data retrieved by the Corporation indicates that the train passed through the crossover area at an average speed of seventy-five miles per hour. The recollection of the grievors is that at the precise point of the crossover their speedometer indicated sixty-five miles per hour. Once through the crossover, the grievors did not bring their train to a full stop, but rather reaccelerated once the train had been reduced to a speed of six miles per hour, and proceeded on their way.

It is not disputed that in the circumstances the grievors were under an obligation to observe a number of rules, which they failed to do. They obviously disregarded the signals, and the limited speed which they required, contrary to CROR rules 406 and 411. Having made an emergency brake application, they were required by rule 102 to stop their train and make an immediate emergency radio broadcast advising all other trains of the situation, as well as communicating to the RTC their location and any possible track obstruction which might have resulted. Rule 125 would also require an emergency broadcast in any situation which might create a hazard to others. General Operating Instruction 7.2 further contains requirements with respect to the handling of the train throttle and the full inspection of each car of the train once it has been brought to a stop, to verify that the brakes are properly released. The

operating instruction also requires the slow departing movement of the train to allow for an inspection in respect of skidded wheels. None of the foregoing rules was complied with by the grievors in the circumstances which occurred.

The incident only came to the Corporation's attention because a VIA employee who was riding as a passenger in the train noticed the rough movement as the train passed through the crossover at a relatively high speed, a fact which was subsequently reported to management. That report led to an examination of the crossover switch the following day. It appears that upon inspection the switch points of the crossover switch were found to be out of alignment by one inch, a circumstance which could have been caused by the overspeed in the crossover, and described as a potential derailment hazard for other trains utilizing the track. The Corporation takes the position that the failure of the grievors to report the incident and, it believes, the damaged condition of the switch, constitutes a further violation of general rules A(iii) and A(iv) which mandate the prompt reporting of any violation of a rule or any condition which might affect the safe movement of a train. Following a disciplinary investigation the Corporation decided to dismiss both grievors from its service.

In the Arbitrator's view the Corporation's concern with respect to the incident which resulted in the dismissal of the grievors is understandable. The overspeed of a passenger train through a crossover switch, with an application of emergency brakes and possible damage to the switch itself, all of which went unreported by the grievors, is obviously extremely serious. As is evident from the submissions made by the Corporation's representative, a substantial part of its concern is prompted by what it views as the wilful concealment of the incident by Mr. Strachan and Mr. Simpson who, it is not disputed, made no report of the incident to the Rail Traffic Controller at the time it occurred, nor any mention of it in their trip report filed with the Corporation at the end of their tour of duty. In his submission the actions of the grievors are properly comparable to those of another locomotive engineer in the service of the Corporation whose dismissal for the concealment of rules' infractions was recently sustained by this Office in **CROA 3181**.

Upon a careful review of the evidence, while the Arbitrator agrees that the incident in question was extremely serious, there are a number of factors which, as argued by counsel for the Brotherhood, would suggest that a lesser, albeit nevertheless serious, measure of discipline in substitution of their discharge would be appropriate. Firstly, in my view the case at hand is fairly distinguishable from the facts considered in **CROA 3181**. In that case the locomotive engineer in question operated a passenger train fully from Niagara Falls to Toronto without the presence of second locomotive engineer in the cab, accompanied only by his ten year old son. The facts there disclosed a deliberate and ongoing rules violation in respect of which the employee took active steps to conceal the facts from the Corporation. While there is obviously an element of non-disclosure in the case at hand, the incident at the crossover switch happened quickly, and lasted only a period of minutes. Based on their own admittedly questionable belief that the smooth movement of their train through the crossover switch suggested no adverse consequence to any equipment, the grievors opted to simply continue on their way, presumably in the ill-advised view that the incident would not attract attention. While there is little to commend the course which they followed, it was prompted by a spur of the moment incident which, to all outward appearances, resulted in no adverse consequences. While on the evidence before the Arbitrator there does not appear to have been any damage to the cars or locomotive, it is less than clear whether the overspeed of the grievors' train through the crossover switch might have caused the damage to the switch points identified some twenty-four hours later.

As counsel for the Brotherhood points out, prior decisions of this Office, and it would appear prior ungrieved discipline imposed by the Corporation, have involved similar errors which resulted in lesser sanctions than the discharge meted out against the grievors. For example, reference is made to two locomotive engineers who proceeded through a crossover at a speed of eighty-seven miles per hour, resulting in the assessment of twenty-five demerits. Even where there has been an element of concealment in a similar safety related rules infraction, the Corporation has seen fit not to terminate the employees involved. For example, in **CROA 2326** the unauthorized entry of a train into work limits, which the grievor sought to conceal, resulted in a 120 day suspension. In **CROA 1626** the application of emergency brakes and a train entering a siding at a speed of fifty miles per hour, without any proper report being made to the rail traffic controller, resulted in the assessment of forty-five demerits. It does appear, however, from the original records in this Office, that in that case the incident was reported upon the arrival of the train at its destination terminal, apparently at the suggestion of the conductor.

The grievors in the instant case are employees of long service with relatively good disciplinary records at the time of the incident in question. Mr. Strachan had twenty-four years of service, and Mr. Simpson twenty-nine years of service at the time, with fifteen demerits and ten demerits outstanding on their records, respectively. While each of

them had previously received substantial discipline for a rules violation on one occasion, neither had any similar infraction for more than ten years before the incident of the crossover switch at Brockem.

When all of these factors are taken into consideration, I am satisfied that a reduced penalty is appropriate, albeit one which reflects a serious measure of discipline. The reinstatement into employment of the grievors at this time, without compensation for any wages or benefits lost, would amount to a six month suspension for the rules infractions which they committed. In light of the length and quality of their prior service, I cannot agree with the Corporation that the bond of trust between themselves and the Corporation cannot be restored. Should the Corporation determine, however, that their return to service should involve a period of work in yard service, not to exceed one year, it may, within its discretion, assign them accordingly.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievors be reinstated into their employment forthwith, without compensation for any wages or benefits lost, and without loss of seniority. In the Corporation's discretion they may be limited to yard service for a period not to exceed one year following their reinstatement.

March 16, 2001

(signed) MICHEL G. PICHER
ARBITRATOR