CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3555

Heard in Montreal Tuesday, 9 May 2006

Concerning

VIA RAIL CANADA INC.

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The discipline assessed Locomotive Engineer Phillip Hope.

JOINT STATEMENT OF ISSUE:

On November 27, 2005 Locomotive Engineers P. Hope and R. Dykens were operating Train No. 88 between Sarnia and Toronto. While operating Train No. 88 they occupied the north main track of the Strathroy Subdivision at Sarnia without authorization in violation of CROR Rule 568 and CN Operating Bulletin no. GLD 5091 dated September 13th, 2005. After an investigation Mr. Hope was suspended for a period of six months.

The Union submits that the discipline assessed Mr. Hope was too severe in the circumstances. There were no conflicting movements or immediate danger at the time of the infractions. The locomotive engineers were interviewed at the time by officers of both Railways by telephone as well as in person and the locomotive engineers were permitted to complete their trip to Toronto. It was on arrival at Toronto that they were removed from service.

Both locomotive engineers gave full and complete explanations regarding the incident and how it occurred. After receiving the six month suspension the Union requested of the Corporation a copy of the discipline recommended by CN but have not received it.

The Corporation submits that the rule violations were serious infractions endangering the safety of the employees, passengers and the public. The Corporation establishes its discipline policy and the rule violations warranted significant discipline. The discipline assessed was progressive and appropriate given that Mr. Hope had committed the same offence three months before.

FOR THE UNION:

(SGD.) J. R. TOFFLEMIRE
GENERAL CHAIRMAN

FOR THE CORPORATION:

(SGD.) E. J. HOULIHAN
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

E. J. Houlihan	– Director, Labour Relations, Montreal
W. Buckley	– Manager, Operations
A. Richard	– Sr. Officer, Labour Relations, Montreal
G. Benn	– Officer, Labour Relations, Montreal

And on behalf of the Union:

J. R. Tofflemire	– General Chairman, Stratford
P. Hope	– Grievor

AWARD OF THE ARBITRATOR

The grievor is an extremely long service employee, with a thirty year railroading career. After service with CN Rail he transferred to VIA Rail as a manager in June of 1987, a position which he held until he was laid off from his management post in 1994. He was then re-hired by VIA as a locomotive engineer in July of 1995.

The six month suspension assessed against Mr. Hope arose out of an incident involving the movement of his train from a yard onto the main line at Sarnia Station. It is common ground that during the course of that move Mr. Hope incorrectly assumed that his workmate, Locomotive Engineer Dykens, had obtained the necessary Rule 568 clearance from the rail traffic controller and that they were proceeding in compliance with CN operating bulletin no. GLD5091. It appears that each of them thought that the other had obtained the necessary clearance.

Following the disciplinary investigation which ensued, Locomotive Engineer Dykens was assessed forty-five demerits while the grievor was issued a six month

suspension. The Corporation's reason for the six month suspension assessed against Mr. Hope resides in the fact that he had previously committed a track occupancy infraction on September 13, 2005. On that occasion, while operating train no. 89 between Toronto and London, he occupied a track without the applicable TGBO in his possession, in violation of Rule 83.1(G) of the CROR. That cardinal rule infraction resulted in a one week suspension. The Corporation viewed the second cardinal rule violation, which is the subject of this grievance, within 2-1/2 months as meriting a far more serious measure of discipline, as a result of which the six month suspension was assessed. It does not appear disputed that the railway responsible for the track in question, CN, had suggested to the Corporation the assessment of a three week suspension for the incident.

The only issue is the appropriate measure of discipline in the circumstances. The Corporation's representative cites a number of precedents to the Arbitrator, suggesting that they would support the assessment of a six month suspension. He recognizes, however, that discipline must be assessed on a case by case basis. He notes the assessment of a six month suspension for two trainmen who caused their train to enter a main track without authority (**CROA 467**). He also notes several cases in which employees were discharged for serious rules infractions, and subsequently reinstated into employment by the Arbitrator, albeit without compensation. The Corporation's representative characterizes those cases (**CROA 2487** and **AH 548**) as confirming the assessment of a lengthy suspension.

The Arbitrator has some difficulty with the employer's characterization of the last two cases cited. The fact that this Office might reinstate an employee, in the exercise of its discretion under the **Canada Labour Code** to substitute a lesser penalty, it is not tantamount to saying that the period of time between the infraction and the arbitration hearing is necessarily the appropriate level of suspension which might apply. Rather, the analysis involves a determination by the Arbitrator that there are arguable grounds for the discharge of the employee but that mitigating factors might suggest the viability of restoring the ongoing employment relationship, sometimes subject to certain conditions. The reinstatement of an employee without compensation in that scenario is not tantamount to saying that the lapse of time between the discharge and the reinstatement is necessarily the appropriate measure of a period of suspension. Rather, it is a means of saying that the employee should be given another chance, albeit at not cost to the employer for the time spent out of work.

There are mitigating factors to be weighed in the case at hand. Firstly, the grievor's prior record is impressive as regards the assessment of discipline. In thirty years of railroading he appears to have been the subject of discipline on only three occasions, two of which occurred recently and are discussed above. While it is true that half of his career having been spent in management, there is a somewhat lesser period of time in service as an employee who might be subject to gathering a disciplinary record. That said, however, there is simply little basis in the material before the Arbitrator to suggest that the grievor could not be corrected by a serious measure of discipline, albeit somewhat less than the assessment of a six month suspension, the

equivalent of fully one-half a year's earnings. This Office has had occasion, in other cases, to reduce such suspension (see, e.g., **CROA 2584**).

On the whole, I am satisfied that a three month suspension would have been amply sufficient, in keeping with the principles of progressive discipline, to bring home to Mr. Hope the necessity of being extremely vigilant with respect to track occupancy and all related clearances. In the circumstances, I am of the view that a six month suspension was unduly harsh, particular regard being had to his long service and prior disciplinary record.

The grievance is therefore allowed, in part. The Arbitrator directs that the Corporation substitute a three month suspension against the grievor for the incident at Sarnia on November 27, 2005, and that Mr. Hope be compensated for the difference in all wages and benefits lost.

May 15, 2006

(signed) MICHEL G. PICHER
ARBITRATOR