

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

CASE NO. 4610

Heard in Montreal, January 11, 2018

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the dismissal (reduced to a time served suspension of 152-days) of Conductor R. Morale.

THE UNIONS'S EXPARTE STATEMENT OF ISSUE:

Following an Investigation, on November 11, 2016 Conductor Morale was dismissed from Company Service as shown on his Form 104 as follows, *“Reference the formal investigation held commencing on October 24, 2016 in connection with your tour of duty on October 14, 2016 while working as Conductor on assignment T12-14, specifically passing signal 47-B on the Mactier Sub and download review.*

Please be advised that you have been dismissed from company service for failing to ensure the safe operation of train T12-14 on the Mactier Subdivision as evidenced by your train operating beyond a signal displaying stop indication and exceeding the maximum authorized speed on October 15, 2016 at approximately 0300, a violation of the following Company Rules:

Rule Book for Train & Engine Employees:

Section 19 Block and Interlocking Signals; 19.3 Rule 436

Section 19 Block and Interlocking Signals; 19.3 Rule 439

Section 17 CTC; 17.7 Passing Stop Signals

Section 5 Emergency; 5.1 Emergency Communication and 5.2 Stopping in Emergency

Section 6 Signals; 6.5 Fixed Signal Recognition and Compliance

Section 2 General; 2.3 (a) (b), (c) and (d)

Section 2, 2.2 (a), (c)

The Union contests that the discipline in this case is excessive in all circumstances. The Company initially dismissed Mr. Morale for his train proceeding by a stop signal/speeding of 4 mph over limit then has turned it into a 152-day suspension (on February 23, 2017 Mr. Morale was reinstated with agreement that grievance would continue).

Mr. Morale believed his Locomotive Engineer was in control of the train after they both acknowledged the restricting signal. Based on this signal the Locomotive Engineer should have been preparing to stop the train if required at the next signal as it could be displaying

stop indication, it in fact was a stop signal. Mr. Morale further believing that his LE had the train under control would be adhering to the speed given the short distance between signals. The LE provided at the time of the incident and at the investigation that he believed he was in fact doing 10-mph but the download showed for a period of approximately 6.7 seconds he was over the speed limit with a maximum of 4-mph over.

Mr. Morale as noted in his statement was looking for the signal to announce its' display account of the short distance between the signals, when he saw it was all red he yelled same and the LE put the train into emergency at that point as he believed he would not be able to bring it to a controlled stop in time. Mr. Morale as noted was looking to see what the next signal was account of an obstruction etc. it would be harder to see. Mr. Morale was not checking the speedometer located on the Locomotive Engineers side of the engine (there was not speedometer located on the Conductors side) during this short amount of time (seconds).

Further to the obstruction (pile of dirt) has since been removed allowing employees to have a better sight line which of course is something positive that came out of this investigation as the process of an investigation is to gain facts, look at preventive measures to ensure this does not happen again and most importantly, to educate.

The Company also asked why no emergency broadcast was made but the crew immediately got a hold of the RTC who in turn gave them the proper authority at that time. When the crew announces over the radio to the RTC that they have just gone by a red signal all other employees hear this as well and take any necessary steps to protect the situation.

The Union requests that Mr. Rick Morale dismissal (substituted for reinstatement with a 152-day suspension) be expunged and he be compensated all loss of wages with interest, without loss of benefits, and seniority, recalculation of EDO's and AV entitlement. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and denies the Union's request.

FOR THE UNION:
(SGD.) W. Apsey
General Chairman

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

- C. Clark – Assistant Director, Labour Relations, Calgary
- D. Pezzaniti – Manager, Labour Relations, Calgary

And on behalf of the Union:

- A. Stevens – Counsel, Caley Wray, Toronto
- W. Apsey – General Chairman, Smiths Falls
- R. Morale – Grievor, Toronto

AWARD OF THE ARBITRATOR

Nature of the Case

1. On November 11, 2016, CP terminated Conductor Rick Morale and his locomotive engineer (LE), *inter alia*, for their train going through a stop signal and for

their failure to make an emergency broadcast. On February 23, 2017, CP reinstated Mr. Morale with the agreement that this grievance could still go forward. This arbitration deals with Mr. Morale's 152-day suspension.

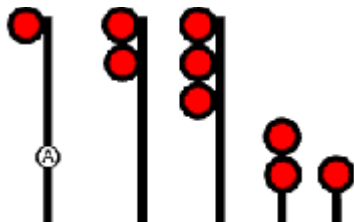
2. The arbitrator has concluded that CP had grounds to discipline Mr. Morale for his part in his train going through a stop signal. Moreover, the crew ought to have made an emergency broadcast rather than call the RTC (Rail Traffic Controller). However, the arbitrator has reduced the suspension to 60 days, which better reflects the range coming from this Office's case law in comparable situations.

Facts

3. The parties do not contest to any great extent the facts.

4. [Rule 439](#) is a cardinal rule and deals with a crew's obligation to stop a train before a stop signal:

439.



Stop - Stop.

OPTIONAL: Unless required to clear a switch, crossing, controlled location, or spotting passenger equipment on station platforms, a movement not authorized by Rule 564 must stop at least 300 feet in advance of the STOP signal.

5. During Conductor Morale's tour of duty on October 14, 2016, i) his train went through a stop signal (stopping one car length, roughly 100 feet, beyond the stop); ii) the train had been exceeding the required restricted speed of 10 mph at the time; and iii) the crew called the RTC, but failed to make the required emergency broadcast.

6. Conductor Morale described a poor sightline at the area of the incident due to a mound of dirt and trees. The sightline issue had existed for a while, but was cleared following the incident. On previous trips, Conductor Morale had not encountered a stop signal at that location, which was just 15 car lengths after a restricting signal 004 ([Rule 436](#)). Conductor Morale was, however, familiar with this particular route and knew of the proximity of the signals.

7. Transport Canada later fined CP \$61,749.24 as a result of three separate incidents involving a Rule 439 violation, including the one involving Conductor Morale (E-1; Company Brief; Tab 14).

Analysis and Decision

8. This Office has noted on many occasions how serious a failure to respect a stop signal can be in the railway industry given the potential consequences. But that failure is not an automatic ground for termination. This Office considers the entire context,

especially when more than one person is involved, when determining whether to intervene and modify the penalty imposed.

9. The TCRC has satisfied the arbitrator that the LE was primarily in control of the train, though a conductor retains a critical role in terms of communicating with the engineer, confirming signals and verifying speed. The arbitrator was not persuaded that the mound of dirt and trees mitigated the seriousness of the incident. Conductor Morale was familiar with the route; the mound had existed for some time. A crew must adjust to the conditions.

10. In his interview, Conductor Morale candidly described the incidents and expressed regret: "I am truly sorry this incident occurred, I feel absolutely horrible about it" (QA 96).

11. Conductor Morale has 18 years of service. In his last five years, he received a 4-day suspension (2016) and 10 demerits (2013). While over his career he had received a total of 105 demerits¹, he had consistently demonstrated his ability to work discipline free for 12-month periods thereby earning demerit point reductions (E-1; Company Brief; Tab 4).

12. The TCRC has persuaded the arbitrator that the 152-day suspension should be reduced to a 60-day suspension. Of the authorities presented, the arbitrator finds

¹ CP has recently stopped using the Brown System of demerit points.

[CROA&DR 2625](#) similar to the current situation, though Conductor Morale also failed to do the mandatory emergency broadcast. But his length of service and a generally positive discipline record with CP justify the reduction of the penalty.

13. The arbitrator orders that CP substitute a 60-day suspension for the current 152-day suspension and compensate Conductor Morale for the difference. The arbitrator remains seized should any questions arise regarding this award.

January 12, 2018



GRAHAM J. CLARKE
ARBITRATOR