

In the Matter of an Arbitration

Between

Ottawa Central Railway

[Employer]

- and -

Teamsters Canada Rail Conference

[Union]

And in the Matter of Normand Proulx

[Grievor]

Before: M.B. Keller, Arbitrator

**Appearances: Laurent Caron for the Employer
Craig Morrison for the Union**

Hearing in Ottawa, October 11, 2006.

AWARD

JOINT STATEMENT OF ISSUE

DISPUTE:

Appeal of the discharge of Locomotive Engineer Normand Proulx of Ottawa, ON for the violations of CROR Rules 103 and 112 as well General Operating Instructions 7.4(b)(i) resulting in the collision of Train #441 and puncture of a tank care at Maxville, ON, on May 2, 2005.

JOINT STATEMENT OF ISSUE:

On May 2, 2005, Mr. Proulx was employed as Locomotive Engineer on Train #441. At approximately 2 a.m., Train #441 was required to set off two cars on the MacEwen siding on track XA-23 at Maxville, ON, on the Alexandria subdivision. In order to set off the cars, an initial cut of 74 cars was made. Train #441 then proceeded westward past the spur switch and then reversed the movement to set off the two cars. While doing so, the initial cut of cars rolled westward and hit the head end portion of the train causing a puncture to a denatured alcohol tank car and resulting in a spill of approximately 100,000 liters.

Following a disciplinary investigation into the incident, Locomotive Engineer Proulx was discharged for violations of CROR Rules 103 and 112 as well General Operating Instructions 7.4(b)(i) on May 2, 2005.

The Union appealed the decision of the Company to discharge Mr. Proulx on the grounds that the penalty imposed was too severe.

The Company declined the appeal.

For the Union:

"Paul Vickers:"
Paul Vickers
General Chairman

For the Company:

"James Allen"
James Allen
General Manager

On agreement of the parties this arbitration was held pursuant to, and following the rules of, the Canadian Railway Office of Arbitration.

On May 2, 2005, the grievor was the Locomotive Engineer on Train 441, consisting of 78 cars, six of which contained hazardous materials. While performing a two car set-off at Maxville, Ontario at approximately 0200, the conductor, Pierre Belliveau, "bottled the air" on the cars. This was found to be a fact by the Transportation Safety Board of Canada, and admitted by Mr. Belliveau. Within two minutes of "bottling the air" the train began to move and the leading box car collided with the tank car which was the lead car in the set off movement. The tank car, which was carrying a load of denatured alcohol, a highly flammable liquid, was punctured and started to leak. As a precaution, 200 nearby residents were evacuated at approximately 0300. The union agrees the accident was serious.

The employer alleges the grievor violated CROR 103 by intentionally blocking two public railway crossings at Maxville as well as CROR 112 and Section 7.4 of GOIs, which prohibit the bottling of air. The grievor was aware of the above.

The union challenges the severity of the penalty imposed, arguing that the discharge was unwarranted.

The position of the employer is that the grievor participated, with the conductor, in a deliberate violation of the rules. They argue that he did not take the steps necessary to ensure CROR 112 was complied with. The employer submits that a competent engineer would have noticed the speed with which the brake system recharged the air to the required pressure and concluded this could have only occurred because the conductor had "bottled the air". He also could have ensured the air was not being bottled by glancing at his IDU device to verify that the air pressure in the brake pipe showed at zero. The grievor acknowledged he did not see it go to zero but he watched it drop a couple of pounds. Finally, it was suggested that it was unnecessary for the conductor to require the grievor

to apply the brakes on the already stopped train unless he was doing this extra step to set up the air brake system to be ready for the air to be “bottled”.

In the alternative, the employer argues that the grievor was an incompetent engineer.

The union accepts that the grievor made an error in judgment when he assumed that the conductor had vented the brake pipe and failed to verify that the air pressure went down to zero as required by CROR 112. It further submits that the grievor should have been able to rely on another employee discharging his full responsibilities. He assumed the performance of the full-service brake application after monitoring the IDU for about 30 seconds and seeing the pressure fall, given the conductor’s practice of releasing the air slowly.

The union also submits that the employer is partially responsible by (a) not insisting on full emergency brake application to service cars left standing during en-route switching and (b) the employer could have been using puncture resistant cars rather than the cars it does.

In dealing, first, with the alleged violation of CROR 103, I find that, at most, it would attract minor discipline. Given the more serious nature of the alleged CROR 112 violation, there is no need to deal further with it.

The essence of the union’s argument is that he can not be held as fully responsible as the Conductor because he was not the one responsible for bottling the air. There is a variation of the “am I my brother’s keeper” argument.

Although not responsible himself for bottling the air there were ways, had he followed CROR112 as required, that he would have more than likely known that the conductor was bottling the air. By not following CROR 112, as required he was unable to do so. CROR 112 provides redundancy to ensure safety. That is why it is there and that is why it should have been followed. By not following, it the engineer contributed to and, it can be said, at

least somewhat abetted the accident. It was his responsibility, by following CROR 112 to check to make sure proper procedures were being followed. He did not. It was his responsibility to be "his brother's keeper".

The question is whether discharge is too severe a penalty. The grievor is a nine year employee with a clear disciplinary record. He was not the one who bottled the air. His responsibility for the accident was more by way of omission than commission. There is ample authority within CROA that the penalty for those not primarily responsible for an accident not be as severe as those primarily responsible. (See for example, CROA 1746). Accordingly, while accepting that the grievor's error was serious, I also accept that it was not as serious as that of the conductor. Accordingly, it is Ordered that the discharge be rescinded. The grievor shall be reinstated to his employment as soon as practical, without compensation or benefits and without loss of seniority.

I retain jurisdiction in the event of any dispute between the parties regarding the interpretation or implementation of this award.

Dated in Ottawa. this 17th day of October, 2006.

M.B. Keller, Arbitrator