

IN THE MATTER OF AN ARBITRATION

CONCERNING

BC RAIL LTD.

AND

CAW, LOCAL 110

**DISPUTE:**

The discipline assessed Locomotive Engineer T. Gifford for his responsibility in a collision between Diesel Engine 619 and a ballast regulator, Fort St. James Yard, March 16, 2002.

**JOINT STATEMENT OF ISSUE:**

On March 16, 2002, Mr. Gifford was employed as a locomotive engineer on the Ft. St. James Switcher assignment. While making a northward movement in the Fort St. James Yard with engine 619 Locomotive Engineer Gifford collided with a ballast regulator. Damage was sustained to the ballast regulator and a switch was run through.

Following an investigation into the incident, Locomotive Engineer Gifford was assessed a three-day unpaid suspension for failing to operate his engine in a manner that would permit stopping clear of the ballast regulator.

The Union has appealed this discipline and, at the final Step of the grievance procedure, has requested that the unpaid suspension be reduced from three days to one day and that Mr. Gifford be compensated for the remaining two days.

The Company declines the Union's grievance.

**FOR THE UNION:**

**Robert Samson**  
**General Chairperson**  
**CAW, Local 110**

**FOR THE RAILWAY:**

**D.A. Lypka**  
**Vice President**  
**Operations**

ARBITRATOR: Christopher Sullivan

COUNSEL: Michael Kieran for  
the Company

Robert Samson and  
Wayne Benedict for  
the Union

DATE AND PLACE OF HEARING: May 28, 2003  
Vancouver, BC

DATE OF AWARD: July 28, 2003

The parties agree I am properly constituted as arbitrator under the terms of their Collective Agreement. At issue is the appropriateness of the penalty issued to Locomotive Engineer Gifford.

The Company's rationale for assessing a three day suspension is captured in its letter to the grievor dated May 22, 2002. That correspondence reads, in part:

The second issue of the collision with the ballast regulator in Fort St. James is another matter, and is one in which culpability on your part has been established. The facts disclose that your crew had provided positive protection to the ballast regulator, specifying a point beyond which he was not to operate his equipment. At the time of this collision, the ballast regulator was stationery, well within these limits. It was then developed that your own movement could not stop at this point of protection, resulting in operating well beyond that point, a collision, extensive damage to the equipment and a run through switch. It is indeed fortunate that serious injury did not result, as the potential for catastrophic results were present.

It was also developed that the required brake test was not performed on your locomotive consist prior to moving it. This, along with the fact that you obviously did not condition

the locomotive brakes to ensure compliance of the flag in effect, indicates the importance of not taking shortcuts....

The evidence reveals that at 2300 on March 16, 2002 the grievor and Conductor Pat Barone were called at Prince George to deliver an engine consist to Fort St. James, perform the required switching, and handle a train back to Prince George. This crew arrived at Fort St. James at 0545, March 16<sup>th</sup> and departed south bound at 1000. The grievor is not the usual employee on this assignment but was working on this date from the spare list of employees. He is, however, fully qualified for the work and is familiar with the layout of the Fort St. James Yard.

There is no direct supervision of employees at certain isolated locations such as Fort St. James, and the required work is coordinated by the Work Order Centre (WOC) in North Vancouver. Switching instructions, track authorities, special instructions and other information necessary for the completion of the work is conveyed to train and engine crews by a variety of means including fax machines, computer, and telephone. The WOC can also arrange track protection between men and equipment that are charged with maintaining the track, and trains and engines working on these same tracks. Instructions pertaining to this protection, how it will be guaranteed, and the roles and responsibilities of different classifications of employees are provided in the Company's Monthly Operating Bulletin.

During the course of their duties at Fort St. James, the WOC instructed Conductor Barone by telephone that Engine 619, the yard engine stationed at Fort St. James, was required to be placed in the Team Track to be fueled. As they were the only available on duty employees at this time and place, the task fell to the grievor and Conductor Barone. At about this time, Foreman Carasco contacted the WOC requesting permission to enter the yard with his ballast regulator. The WOC initially told Foreman Carasco he would have to wait for a brief period, but allowed him to speak directly to the train about where

he needed to go. Foreman Carasco's recollection was captured in the following statement at the grievor's investigative hearing:

...So I called 619 talked to the conductor and asked permission to come out of the speeder shed track. They said they were coming down and I could come out but not come south of the main crossing by the yard office because they were gonna go into the team track.

So I pulled out of the speeder shed track and stopped clear of the switch points to line the switch. Stepped outside was cleaning the points when the yard engine hit me and pushed the regulator through the points (front wheels only). The engineman said he tried to stop but brakes were frozen and that he dumped it at the crossing. He must have been doing between 6 and 8 MPH.

Conductor Barone wrote out his account of the mishap about ten minutes after it happened. His promptly filed internal Company 67 Incident Report states:

We were bringing Eng 619N. through P-2 to put eng. into team track for fuel + so we can get truck for our work. Eng 619 stopped on thru track swt. Due to talk on radio by others. I said 619 to move 1 more carlength back to clear swt. and rst. Swt. to normal and locked. I went to xing and gave 619 back 10 cars. I was on Xing, manually protecting it, in addition to telling 619 that lights and bell were on. I gave 6 cars, 3 cars, 2, 1 and stop. I said stop again and waved arms. I heard no reply. I radioed Frmn Carrasco and yelled at him to move out of way. John [Carrasco] was at N. switch. John waiting there us to clear into team track. 619 stopped near John's regulator. I ran down to John + 619. Ran thru switch + hit regulator or vise/versa. Terry [the grievor] hurt R. hand while trying to get H brake on quickly.

The evidence reveals that when the grievor took charge of engine 619, he failed to perform the required brake test before moving. During his investigative hearing he

readily acknowledged this, adding he understood the engine was only going to be moved “enough to allow us to get at our train”. The grievor also acknowledged at his investigative hearing, that he was fully aware that Foreman Carasco’s ballast regulator was located on the track ahead, the movement to be made, and the route to be taken. He was in constant radio communication with Conductor Barone during the 619 move. Question and answer #26 from the investigative hearing states:

Q: According to the (form) 67, you were given 6 cars, then 3, 2, 1, then stop. Did you respond, as required by the rule, to these radio instructions?

A: I’m not sure if I responded to these instructions because I was watching outside in the direction of the movement. I was trying to pay attention to the ballast regulator on the track north of me more than the radio instructions. I wanted to make sure that I was going to get stopped.

The evidence reveals that at the relevant time the weather was extremely cold, about -30c, a north wind was blowing, and about three inches of snow covered the rail. Further, the ballast regulator which was struck, cost about \$40,000 to repair.

As noted in the Joint Statement of Issue, cited at the outset of this Award, the Company asserts the three day suspension issued to the grievor was warranted “for failing to operate his engine in a manner that would permit stopping clear of the ballast regulator”. The Union, on the other hand, essentially takes the position that the penalty issued to the grievor is excessive in all of the circumstances. Counsel asserts Foreman Carasco was primarily to blame as he did not set up a red flag or red light to protect his track unit, as required by CROR 40.1:

...Mr. Gifford was not required to be able to stop short of a track unit, but he was required to stop short of equipment

and/or the red flag or red light prescribed by Rule 40.1. Foreman Carasco failed to place a red flat to protect his track unit, as required by the Rules.

CROR 40.1, entitled Protection of Track Work on Other Than Main Track, essentially calls for the placement of a red flag for protection by day, or a red light at night, to be in clear view of an approaching train or engine.

### Decision

Determining whether a particular imposed sanction is excessive invites an assessment of all of the circumstances surrounding the situation, including mitigating factors. For the following reasons I have concluded the three day suspension issued to the grievor in the present case was not excessive. By all accounts, including the grievor's forthright statements at his investigative hearing, he was aware of the relative location of the ballast regulator and had his attention properly focused on it. He was clearly aware of the extreme weather conditions, and the fundamental requirement to check the conditioning of the brakes pursuant to Item 9.2 of the General Operating Instructions, which reads:

#### **9.2 Conditioning of Brakes**

Under winter conditions, the locomotive engineer must make periodic use of the air brake at sufficient intervals to keep the braking surfaces free of ice and snow and brake equipment conditioned for service.

The grievor's failure to comply with Item 9.2 was the direct cause of the March 16, 2002 accident. While the grievor committed only a single mistake, it was one which clearly carried the potential for serious consequences, which warrants a serious disciplinary response. It goes without saying that a moving engine unable to come to a controlled stop poses an extremely dangerous situation. The brake check is an essential

safety requirement under Item 9.2 of the General Operating Instructions, and requires strict adherence.

The evidence supports a conclusion that Foreman Carasco's failure to place protection in compliance with CROR 40.1 did not have any bearing on the accident. Suffice it to observe the grievor was fully cognizant of the location of the track unit; a red flag or light would have provided no warning beyond what the grievor has admitted he already knew. In other words, had the grievor observed properly placed protection he still would not have been able to bring the engine to a stop.

To the grievor's credit he has a discipline-free record, although he had only been employed for about eighteen months at the time of the incident. Further, the grievor did go to extraordinary lengths in trying to stop the engine. He made an emergency application of the brakes, and then attempted to tie on a hand brake, injuring himself in the process.

I am not, however, satisfied these mitigating factors are sufficient to justify any reduction in the sanction imposed. The three day suspension is, therefore, upheld and the grievance is dismissed.

It is so awarded.

Dated at the City of Vancouver in the Province of British Columbia this 28<sup>th</sup> day of July, 2003.

*Christopher Sullivan*

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Christopher Sullivan