

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3201

Heard in Montreal, Tuesday, 10 July, 2001

concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**EX PARTE**

**DISPUTE:**

Discipline assessed to and dismissal of Mr. Richard Haut.

**EX PARTE STATEMENT OF ISSUE:**

On August 2, 2000, the grievor received two Form 104s. The first assessed the grievor with 30 demerits "for failure to properly control the movement of track unit 4211-50 ... which resulted in a collisions with track unit 4204-29". The second assessed the grievor with dismissal for accumulation of demerits. The Brotherhood grieved.

The Union contends that: **1.)** The grievor has admitted his error and has shown real remorse. **2.)** The Company has unreasonably refused to defer the grievor's discipline. **3.)** The grievor is a long service employee and there is no reason why other measures, short of dismissal, could not have been taken to rectify the situation. **4.)** The discipline assessed to and the dismissal of the grievor was excessive and unwarranted in the circumstances.

The Unions requests that the grievor be reinstated into Company service forthwith without loss of seniority and with full compensation for all financial losses incurred as a result of this matter.

The Company denies the Union's contentions and declines the Union's request.

**FOR THE BROTHERHOOD:**

**(SGD.) J. J. KRUK**  
**SYSTEM FEDERATION GENERAL CHAIRMAN**

There appeared on behalf of the Company:

E. J. MacIsaac – Manager, Labour Relations, Calgary

And on behalf of the Brotherhood:

P. Davidson – Counsel, Ottawa

D. W. Brown – General Counsel, Ottawa

J. J. Kruk – System Federation General Chairman, Ottawa

### **AWARD OF THE ARBITRATOR**

The material before the Arbitrator establishes that the grievor was responsible for an unfortunate collision of equipment on July 10, 2000. It does not appear disputed that the grievor was then operating a ballast regulator and was proceeding eastward. According to his account the cab of his machine was extremely hot, as the air conditioning was not functioning properly. He also states that he was moving towards the sun, and that his visibility was reduced by reason of stick-on blinds provided to him by the Company to help with the problem of heat in the cab. The grievor relates that he was in the process of removing his shirt because he was too warm when his machine collided with a Chase tamper being operated by employee Ken MacMullin. Mr. MacMullin suffered a shoulder injury which caused him to be off work for a number of months, and the damage to the equipment involved is estimated in the neighbourhood of \$20,000.00.

The only issue at hand is the appropriate level of discipline. In considering that question the Arbitrator is satisfied that there are mitigating circumstances to be considered in the case at hand. On the basis of the material before me I am not inclined to accept the suggestion of the Brotherhood that the accident was contributed to, in some part, by the fact that the Company had allowed the machine which he was operating to lose its air conditioning function. The only documentation available indicates that the defect was noted in the Company's records by the grievor as of June 27, 2000. His own statement during the course of the investigation also indicates that he was provided window blinds by the Company as a means of mitigating the problem. While it may be that the Company did have an awareness of the problem of discomfort within the grievor's machine, it remained incumbent on Mr. Haut to be vigilant, or to decline to operate the equipment if he felt it created a dangerous condition. The simple expedient of stopping his machine to remove his shirt would have arguably avoided the collision which occurred.

However, in light of certain mitigating factors, the Arbitrator is compelled to agree with the Brotherhood that discharge was an excessive measure of discipline for the grievor's error of judgement. When all of the facts are taken into consideration, including the length of the grievor's service, being some eighteen years, and the fact that he has had relatively little in respect of rules violations on his record, I am satisfied that this is an appropriate case for reinstatement, albeit without compensation.

The Arbitrator therefore directs that the grievor be reinstated into his employment forthwith, without compensation or benefits, without loss of seniority and with the 30 demerits to be removed from his record. The period between the grievor's discharge and his reinstatement shall be recorded as a suspension upon his record for the accident of July 10, 2000.

July 13, 2001

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**