

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3224

Heard in Calgary, Thursday, 15 November 2001

concerning

CANADIAN PACIFIC RAILWAY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (UNITED TRANSPORTATION UNION)

DISPUTE:

The assessment of 20 demerit marks to Lethbridge conductor T.C. George and his subsequent dismissal account an accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

On November 3, 1999, following a formal investigation, Conductor T.C. George's discipline record was debited with twenty (20) demerit marks for his failure to be properly alert and attentive in the performance of his duties, and for his failure to take proper action to ensure that the movement under his control was not moved foul of another track until the route was clear for his movement, resulting in a collision with a car in an adjacent track, a violation of CROR rule 114(a), at mile 38.9, MacLeod Subdivision, October 8, 1999.

Conductor George was subsequently dismissed on account of an accumulation of demerit marks.

The Council advanced a grievance contending that the imposition of 20 demerit marks for the incident of October 8, 1999, and Conductor George's subsequent dismissal for an accumulation of demerit marks was too severe in all of the circumstances. The Council requests that Conductor George be reinstated on terms the arbitrator considered appropriate.

The Company has declined the Council's grievance.

FOR THE COUNCIL:

(SGD.) D. H. FINNISON

FOR: GENERAL CHAIRPERSON

FOR THE COMPANY

(SGD.) C. M. GRAHAM

FOR: GENERAL MANAGER, FIELD OPERATIONS

There appeared on behalf of the Company:

D. E Freeborn	- Labour Relations Officer, Calgary
G. S. Seeney	- Manager, Labour Relations, Calgary
C. D. Carroll	- Director, Labour Relations, Calgary
D. E. Guerin	- Labour Relations Officer, Calgary
K. Ranger	- Service Area Manager - Alberta
K. Bishop	- Road Manager - Lethbridge

And on behalf of the Council:

D. Ellickson	- Counsel, Toronto
L. O. Schillacci	- General Chairperson, Calgary
D. Finnson	- Vice-General Chairperson, Calgary

T. C. George

– Grievor

AWARD OF THE ARBITRATOR

The sole issue in the case at hand is whether the discipline assessed against Conductor T.C. George should be reduced. Regrettably, the Arbitrator is compelled to the conclusion that in the circumstances of this case it should not.

It is not disputed that the grievor was involved in a side-collision while responsible for the movement of his train on October 8, 1999. Specifically, while handing the movement of cars into the Cargill Plant, at or about mile 38.9 of the MacLeod Subdivision, by his own admission the grievor became distracted and allowed the lead car of his movement to make a light side collision with another car foul of the track. In normal circumstances the assessment of twenty demerits would be entirely appropriate for an error of that kind, regard being had to the grievor's own prior disciplinary record, which is extensive.

It is Mr. George's prior record which becomes the stumbling block in the case at hand. Over the period of his career, since 1981, he had previously registered four incidents of discipline for serious rules infractions. Significantly, his record stood at fifty-five demerits when, in June of 1998 he was responsible for a derailment during switching. On that occasion, when he was plainly subject to dismissal, the Company opted to register a "caution" against his record, essentially to save his job.

In November of 1998 he was assessed twenty demerits for absenteeism, a problem which had been relatively chronic in his career. That placed him at seventy-five demerits, again in a plainly dismissable position. Once more, in an effort to give the grievor a further reprieve from discharge, the Company agreed to apply the Deferred Discipline Policy. As it was explained to the Arbitrator, his discipline record would have been reduced to fifty-five demerits if he had been able to remain discipline free for the ensuing year, under the Deferred Discipline Policy. Unfortunately, the incident at the Cargill Plant transpired during that one year period, albeit only few days shy of its conclusion. Even accepting, however, that the grievor's record might have been reduced back to fifty-five demerits, in light of his record the side-collision for which he was responsible would have justified a measure of demerits which would have again raised him above the dismissable limit of sixty.

In mitigation counsel for the Council ably argues that much of the grievor's prior disciplinary record is attributable to personal marital difficulties which he experienced. Without diminishing that hardship, it appears to the Arbitrator that while those difficulties might explain Mr. George's poor record in respect of absenteeism, particularly since 1994, that family hardship is less than compelling as an explanation for the repeated serious rules infractions in which he has been involved. As noted above, he has effectively been given two second chances by the Company, the last being under the extraordinary application of deferred discipline. In such a circumstance an arbitrator should be extremely cautious to interfere, lest the very purpose of deferred discipline is itself undermined. In these circumstances, whether the evidence of the grievor's past personal problems elaborated at the hearing would justify a compassionate reinstatement is for the Company to decide.

For all of the foregoing reasons the grievance must be dismissed.

November 16, 2001

(signed) MICHEL G. PICHER
ARBITRATOR