

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3278

Heard in Montreal, Tuesday, 10 September 2002

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

The assessment of 30 demerits to the grievor, Mr. Richard Haut, and his subsequent dismissal for accumulation of demerits.

BROTHERHOOD'S STATEMENT OF ISSUE:

On September 25, 2001, the grievor, while operating a Ballast Regulator, caused damage to the regulator's wing when the wing collided with a bridge on the Laggan Subdivision. He was dismissed for accumulation of demerits.

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)** A similar accident 5 days earlier resulted in a different employee receiving only a caution. **(5)** The discipline assessed to, and the dismissal of, the grievor was excessive and unwarranted in the circumstances.

The Union 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:

A. Damji	– Labour Relations Officer, Calgary
E. J. MacIsaac	– Manager, Labour Relations, Calgary
R. V. Hampel	– Labour Relations Officer, Calgary

And on behalf of the Brotherhood:

P. Davidson	– Counsel, Ottawa
J. J. Kruk	– System Federation General Chairman, Ottawa
D. W. Brown	– General Counsel, Ottawa

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied, on the balance of probabilities, that the grievor negligently failed to secure and lock the wing of his ballast regulator as he proceeded westward on the south track of the Laggan Subdivision on September 25, 2001. As a result of his negligence, at mile 117.7 his ballast regulator struck a bridge, shearing off the wing of the regulator. Given the physical moves necessary to hydraulically lift the wing and secure it in the locked position, there can be no doubt but that the incident was the result of the negligence and inattention exhibited by Mr. Haut. The fact that the blocking of the wing could only have come after a sequence of hydraulic moves calls into question the credibility of the grievor's own explanation that he had believed that he had locked the wing in place prior to proceeding along the main track.

Unfortunately, the record discloses that the grievor has less than a positive disciplinary history. In February of 2000 Mr. Haut was assessed twenty demerits for operating a speed swing on a main track without proper track protection. In August of 2000 he was assessed thirty demerits for failing to control his regulator, which caused a collision with a stationary chase tamper, resulting in serious injury to the operator of the tamper. That incident resulted in his discharge, and his eventual reinstatement by this Office, with his record to stand at forty demerits, as reflected in **CROA 3201**. Within two months of his reinstatement the safety infraction which is the subject of this grievance occurred.

The unfortunate events which occurred during the grievor's last eight active months of employment are regrettable. More regrettable is the fact that the application of progressive discipline appears to have had no effect of the grievor's ability or willingness to work in a safe and careful manner. In the circumstances, the Arbitrator is compelled to conclude that Mr. Haut has received the benefit of progressive discipline and, for reasons which he best appreciates, has not demonstrated that he can be trusted to operate Company equipment in a safe and reliable manner. In the circumstances I am compelled to conclude that the assessment of thirty demerits was within the appropriate range of discipline, and that there are no mitigating circumstances that would justify an adjustment in that penalty.

For the foregoing reasons the grievance must be dismissed.

September 13, 2002

(signed) MICHEL G. PICHER
ARBITRATOR