

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION**

**CASE NO. 3483**

Heard in Montreal, Wednesday, 11 May 2005

concerning

**VIA RAIL CANADA INC.**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**EX PARTE**

**DISPUTE:**

The appeal of discipline assessed Locomotive Engineer E. Neis of Smithers, B.C. and that which is as follows:

The assessment of twenty (20) demerits for the alleged failure to comply with the Corporation requirements while handling VIA Rail equipment at Prince George on November 3 & 4, 2004, and;

The assessment of fifteen (15) demerits for the alleged failure to comply with station time at Terrace, B.C. while handling Train No. 6, on October 27, 2004 and all of which resulted in the grievor's discharge on November 24, 2004.

**UNION'S STATEMENT OF ISSUE:**

The Union asserts that the Corporation has not met the burden that Locomotive Engineer Neis was culpable with respect to the incidents that allegedly occurred at Terrace and Prince George.

In the alternative, the Union contends that if some form of discipline is in fact warranted, then the termination of Locomotive Engineer Neis is a reaction that is far too severe when considering the mitigating factors and the grievor's length of service.

The Union contends that the Corporation has not followed the progressive scheme contemplated in the collective agreement in that the assessment of discipline in the instant case was pyramided.

The Union moreover contends that the grievor did not receive a fair and impartial hearing as contemplated in article 20 of agreement 1.4.

The Union has requested that the discipline assessed be expunged or minimally, be reduced and that the grievor be reinstated into employment with the carrier with full seniority and compensated for all wages and benefits lost during his termination.

The Corporation does not agree with the Union's position.

**FOR THE UNION:**

**(SGD.) D. E. BRUMMUND**  
**FOR: GENERAL CHAIRMAN**

There appeared on behalf of the Corporation:

L. Laplante	– Sr. Officer, Labour Relations, Montreal
G. Larochelle	– Manager, Customer Services, Edmonton
G. Benn	– Labour Relations Officer, Montreal

And on behalf of the Union:

D. E. Brummund	– Sr. Vice-General Chairman, Edmonton
G. Broda	– General Secretary/Treasurer
B. Willows	– Vice-General Chairman
E. G. Neis	– Grievor

**AWARD OF THE ARBITRATOR**

The material before the Arbitrator establishes that the grievor did render himself liable to discipline on two separate occasions. In the first instance he disregarded direct instructions which had been given to him, as well as to other locomotive engineers, on a one-to-one basis, with respect to the yarding and unyarding of equipment at Prince George. It does not appear disputed that on arrival in Prince George on November 3, 2004 the grievor was to store his train, Train No. 6, in a designated storage track, track GR-64, where it was to be coupled, tail end to tail end, with Train No. 5 which was stored on the same track. In fact the grievor failed to couple the trains.

The purpose of the coupling was to allow both trains to be pulled out of the storage area and back into the station the next morning. In fact, the next morning the grievor was assigned to Train No. 5, which train he removed from the storage track without it being coupled to Train No. 6. In the result, Train No. 6 was not pulled into the Prince George station in a timely and proper fashion and was late in departing on that day.

As a result of that incident, on November 24, 2004 the grievor was assessed twenty demerits. As his record previously stood at forty-five demerits, that discipline placed him in a dismissible position.

The second head of discipline concerns an unrelated event. On October 27, 2004 the grievor was working as one of the two locomotive engineers operating Train No. 6 between Prince Rupert and Smithers, British Columbia. His train was scheduled to arrive at Terrace at 10:20 and to depart that location at 10:25. In fact, it arrived at 10:10 and by an error committed by the grievor, it departed early, leaving the station at 10:18. It would appear that as the train was departing at 10:18 the Service Manager radioed to the head end to stop, which allowed a passenger who was then pulling into the parking lot to make the train. The train then departed, still early, at approximately 10:23.

In fact the train's early departure contributed to another passenger missing the train, a person who was compelled to drive in her automobile to the next station at Kitawanga, approximately one hour distant. Following an investigation of that incident the grievor was assessed a penalty of fifteen demerits.

Part of the grievance involves a challenge by the Union to the regularity of the investigation process followed by the Corporation. It is common ground that the presiding officer, Manager of Customer Services Mr. Guy Larochelle, had the assistance of a second person, Operation Officer Peter McCarron. The Union's representative submits that the effective "doubling up" of the investigating officer constitutes a departure from the procedures contemplated in article 20 of the collective agreement which governs investigations and discipline.

The Arbitrator cannot sustain that objection. While it is true that the article refers to the "presiding officer", as for example in article 20.6, there is nothing in the material in the case at hand to suggest that that norm was departed from. As explained by the Corporation's representative, the presiding officer, Mr. Larochelle, is not a locomotive engineer. Mr. McCarron, who has experience as a locomotive engineer, was in attendance to assist him with respect to the more technical aspects of locomotive operation and any safety issues which it appears the grievor intended to raise with respect to the issue of handling trains in and out of the storage area at Prince George. In the Arbitrator's view there is nothing in these facts which would constitute a departure from the standard of a fair and impartial investigation, nor any other aspect of the

provisions of article 20 of the collective agreement. Nor does the Arbitrator find any merit in the suggestion of the Union's representative to the effect that the Corporation improperly went back in time to deal with the incident at Terrace, or that there was an alleged "doubling" of discipline in a manner that was somehow inappropriate.

With respect to the merits of the dispute, there are mitigating factors which, I am satisfied, must be taken into account. The grievor has extremely long service, having first been hired by CN in 1973. The record discloses that although he commenced his service with VIA in 1995, Mr. Neis effectively remained discipline free for a period of fourteen years, between 1990 and 2004. While it is true that he was involved in a serious collision of equipment in 2004, an incident which attracted the assessment of forty-five demerits, which was not grieved, there is reason to conclude that it is not inappropriate for the Arbitrator to exercise his discretion to substitute a lesser penalty in the case at hand. In approaching that issue, however, I am mindful that the grievor should have been aware of the effect of the cumulative impact of the Brown system of discipline, and that being in the precarious position of having forty-five demerits on his record, he could ill afford two additional incidents which attracted discipline.

In all of the circumstances I am satisfied that this is not an appropriate case for compensation, but that reinstatement should be directed. The Arbitrator therefore directs that the total of thirty-five demerits assessed against the grievor for both incidents which are the subject of this arbitration be struck from his record, that he be reinstated forthwith into his employment without loss of seniority and without

compensation for wages and benefits lost. The period of time between his termination and his reinstatement shall be recorded as a suspension for the combined incidents of November 3 & 4, 2004 at Prince George and October 27, 2004 at Terrace.

May 16, 2005

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