

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

CASE NO. 3521

Heard in Calgary, Tuesday, 8 November 2005

concerning

CANADIAN PACIFIC RAILWAY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of 30 demerits issued to Mr. Ryan Horachek on June 28, 2002 in connection with a tour of duty on June 7, 2002, and subsequent dismissal for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On June 28, 2002, Mr. Horachek was issued 30 demerits for rule violations in connection with a tour of duty June 7, 2002. He also received a Form 104 dated June 28, 2002 dismissing him on account of accumulation of demerits.

On June 7, 2002 Mr. Horachek failed to obtain a clearance authority prior to entering Bulyea Sub. main track and failed to obtain Form T GBO protection for leaving equipment on the main track.

Mr. Horachek is a long service employee with 24 years of service. The Union's position is that the quantum of discipline is far too severe in these circumstances and the ultimate result of the discipline (discharge) is also excessive in the circumstances.

It is the Union's position that there are sufficient mitigating factors to warrant reinstatement without loss of seniority or benefits and with a substantial reduction in demerit points. These mitigating factors include: the long service of Mr. Horachek, Mr. Horachek's rehabilitative potential; the circumstances in which the incident occurred, including the lack of damage attributable to the incident; the grievor's honesty and cooperation during the investigation; Mr. Horachek's awareness of the gravity of the situation and his good faith apology for the incident and; that the penalty imposed has created special hardship for the grievor in light of his particular circumstances.

The Union seeks an order that the grievor be reinstated without loss of seniority and upon such other terms as the Arbitrator deems appropriate.

The Company disagrees with the Union's position. The Company's position is that the discipline assessed Mr. Horachek on June 28, 2002 is appropriate and justified in the circumstances. The Company believes that the grievor violated a series of safety rules and cannot be trusted to work in a safe manner.

The Company does not believe that the facts of this case warrant a reduction in the discipline in question. Further, the Company does not believe that the facts as a whole warrant the reinstatement of the grievor under any circumstances and therefore denies the Union's request.

FOR THE UNION:

(SGD.) D. FINNISON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. HAMPEL
FOR: GENERAL MANAGER

There appeared on behalf of the Company:

- A. Azim – Assistant Labour Relations Officer, Calgary
- J. Copping – Director, Labour Relations, Calgary
- G. Gresty – Road Manager, Saskatoon
- S. Sutherland – , Calgary

And on behalf of the Union:

- D. Ellickson – Counsel, Toronto
- D. Finnison – General Chairperson, Calgary
- D. Able – General Chairperson, Calgary
- D. Olson – Vice-General Chairperson, Calgary
- A. Singer – Vice-General Chairperson, Cranbrook
- G. Crawford – Local Chairperson, Lethbridge
- R. A. Hackl – Vice-General Chairperson, CN Lines West, Edmonton
- R. Horachek – Grievor

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator establishes that on or about June 6, 2002, the grievor was responsible for setting a locomotive off at the Bulyea sub-junction switch. The evidence confirms that his crew set off the engine on the south leg of the wye, which is main track. They entered that territory without a proper clearance to do so and left the unattended equipment on the main track without obtaining a Form T GBO, as required by the rules. In the result, they

committed two serious rules violations, characterized by the Company as cardinal rules violations.

The sole issue in this grievance is the appropriate measure of discipline. Other than the length of the grievor's service, which is some twenty-four years, the collateral factors are more aggravating than mitigating. The record discloses that over his years of service the grievor attracted discipline on twenty-five separate occasions, amassing a total of 334 demerit marks. Fifteen of the incidents in his disciplinary file involved rules infractions, six of which resulted in damage to equipment and derailments or collisions. The unchallenged assertion of the Company is that the grievor has one of the most extensive negative disciplinary records for a running trades employee in the service of the employer.

Significantly, on two separate occasions Mr. Horachek's disciplinary record rose to the brink of discharge, at fifty-nine demerits. While that questionable record may be somewhat distant in the past, the documents before the Arbitrator confirm that between September of 1998 and the culminating incident of June of 2002, Mr. Horachek was involved in four incidents of cardinal rules infractions, one of which in September of 2001, involved a collision, derailment and damage to both equipment and track structure.

In light of so negative a disciplinary record the Arbitrator is unable to disagree with the submission of the Company's representative. The record discloses that over a substantial period

of years the Company has applied progressive discipline, making every reasonable effort to give the grievor the opportunity to improve his standards, particularly with respect to rules violations. While he recorded some good years, the general picture that emerges is one of an employee who has not, in the end, demonstrated an ability to avoid serious rules infractions. In the circumstances, the thirty demerits issued against him, which are within the normal range of discipline for such events, cannot be disturbed. Given that Mr. Horachek's prior record stood at forty demerits, the Arbitrator is compelled to the unfortunate conclusion that the grievance must be dismissed.

November 14, 2005

(signed) MICHEL G. PICHER
ARBITRATOR