

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

CASE NO. 3606

Heard in Montreal, Wednesday, 14 February 2007

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of 35 demerits and subsequent dismissal assessed to Locomotive Engineer S.J. Black of Red Deer, Alberta.

JOINT STATEMENT OF ISSUE:

On February 28, 2005 Locomotive Engineer S.J. Black was assessed 35 demerits for “failing to ensure your train operated in a safe and proper manner resulting in your train exceeding the speed limits when governed by a restricted signal as well as a permanent slow order, failing to initiate a whistle application at the whistle posts, and failing to properly perform an initial brake application during your tour of duty on the Leduc Subdivision, January 13, 2005.”

The 35 demerits resulted in Locomotive Engineer Black being dismissed from employment with the Company on account of an accumulation of demerits.

It is the position of the Union that the assessment of 35 demerits and the resulting dismissal of Locomotive Engineer Black was excessive in all of the circumstances and the Union submits he ought to be reinstated into employment with the Company.

The Company has denied the Union’s request.

FOR THE UNION:

(SGD.) D. R. ABLE

GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) C. AYOTTE

**FOR: D. McFARLANE, ASSISTANT VICE-
PRESIDENT, FIELD OPERATIONS**

There appeared on behalf of the Company:

C. Ayton	– Labour Relations Officer, Calgary
D. Freeborn	– Labour Relations Officer, Calgary
B. Jacobs	– Road Manager, Red Deer
S. Nelson	– Manager Operations, Smiths Falls
S. Doyle	– Road Manager, Smiths Falls

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
D. Able	– General Chairman, Calgary
A. Werbiski	– Local Chairman, Red Deer
S. Black	– Grievor

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that the Company is correct in all of the rules infractions which it alleges the grievor violated during the course of his duty on January 13, 2005. He was clearly deserving of a serious measure of discipline, particularly with regard to his failure to observe speed limits in territory governed by a permanent slow order, as well as his failure to perform a proper brake test at the outset of his tour of duty.

There are, however, mitigating factors to be considered in determining whether these events justified the termination of Mr. Black's employment. An employee of some seventeen years' service, Mr. Black did have a relatively negative disciplinary record in the 1990s. However, there is reason to believe that he made significant efforts to improve his work performance and reliability. It is notable, as stressed by counsel for the Union, that in the four year period between 2000 and 2004, Mr. Black worked without any disciplinary incident whatsoever, a marked improvement over his performance in earlier years. In addition, while this Office appreciates the seriousness of speeding, as noted by the Union's representatives, certain of the overspeed allegations asserted by the Company, based on a Q-tron download of Mr. Black's light engines movement, confirm that in some instances the overspeed registered was relatively minor and for short periods of time, albeit not in all cases. There were, as the Company's representatives point out, occasions when he was five miles an hour in excess of the speed limit, a point at which an emergency brake application would normally be called for, something which was not done.

Bearing in mind the length of the grievor's service and the improvement in the quality of his performance in more recent years, there is reason to conclude that he should be given an opportunity to demonstrate that he can work in a safe and efficient manner, consistent with all operating rules.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for any wages and benefits lost. His disciplinary record shall stand at forty-five demerits, with the period between his termination and reinstatement to be recorded as a suspension for the events of January 13, 2005.

February 16, 2007

(signed) MICHEL G. PICHER
ARBITRATOR