

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

**CASE NO. 3645**

Heard in Montreal, Wednesday 13 February 2008

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**UNITED TRANSPORTATION UNION**

**EX PARTE**

**DISPUTE:**

The assessment of a twenty-three (23) day suspension to Peter L. Stevenson of Saskatoon, Saskatchewan for "violation of CROR Rule 104.5(b), resulting in the derailment of one set of wheels on locomotive CN 1434 at the derail on the Nutana Lead SA01, during your tour of duty as Yard Conductor on YSK605-23" on January 24, 2005.

**COMPANY'S STATEMENT OF ISSUE:**

On January 24, 2005, Peter Stevenson was working as yard conductor on assignment YSK605-23. This assignment had completed its assigned work in the "A" zone and was proceeding towards the main line in order to return to Saskatoon Yard. As the locomotive approached the derail, the engineer applied the brakes preparing to stop. The locomotive did not stop in time however resulting in the derailment of one set of wheels.

Following an investigation Yard Conductor Peter Stevenson was assessed a twenty-three (23) day suspension for violation of CROR rule 104.5(b).

The Union submits that the assessment of a twenty-three day suspension is excessive given Mr. Stevenson's limited role in the derailment.

The Union requests that the suspension be expunged and replaced with an assessment more appropriate in the circumstances.

The Company disagrees with the Union and has denied the request.

**UNION'S STATEMENT OF ISSUE:**

On January 24, 2005, Peter Stevenson was working as yard conductor on assignment YSK605-23. This assignment had completed its assigned work in the "A" zone and was proceeding towards the main line in order to return to Saskatoon Yard. As the locomotive

approached the derail, the engineer applied the brakes preparing to stop. The locomotive did not stop in time however resulting in the derailment of one set of wheels.

Following an investigation Yard Conductor Peter Stevenson was assessed a twenty-three (23) day suspension for violation of CROR rule 104.5(b).

The Union submits that the assessment of a twenty-three day suspension is excessive given Mr. Stevenson's limited role in the derailment.

The Union requests that the suspension be expunged and replaced with an assessment more appropriate in the circumstances.

The Company has denied the Union's request, without discussing the matter and without providing a substantive response to the grievance.

**FOR THE UNION:**

**(SGD.) R. S. THOMPSON**  
GENERAL CHAIRPERSON

**FOR THE COMPANY:**

**(SGD.) K. MORRIS**  
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

- K. Morris – Manager, Labour Relations, Edmonton
- B. Laidlaw – Manager, Labour Relations, Winnipeg

And on behalf of the Union:

- D. Ellickson – Counsel, Toronto
- R. S. Thompson – General Chairperson

**AWARD OF THE ARBITRATOR**

Upon a careful review of the evidence the Arbitrator is persuaded that there are mitigating factors which were not taken into account by the Company in the assessment of the twenty-three day suspension imposed against Conductor Stevenson, a very serious measure of discipline. It is not disputed that the grievor's train did partially derail by reason of the fact that the locomotive engineer did not handle his train in such a way as to stop short of a derail on the Nutana Lead on January 24, 2005. In fact, however, all outward indications leading up to that moment were not such as would have placed the grievor on clear notice of any impending danger or difficulty.

The evidence confirms that, during the course of the tour of duty immediately preceding, the grievor's locomotive engineer was able to move and spot his locomotive without any apparent difficulty while servicing various industrial customers on the yard assignment out of the Saskatoon Terminal. At the time of the incident the consist under the grievor's direction, which included two locomotives, was hauling five empty cars. As the consist approached the general area of the derail, at a distance of approximately one-tenth of a mile, it was travelling at the reasonable speed of eight miles per hour. It is at that point that the locomotive engineer made the first brake application. As is evident from the computer download taken from the locomotive, the initial brake application involved a brake pressure reduction. Some ten seconds later the locomotive engineer further applied the locomotive's independent brakes. It appears that these combined efforts of the locomotive engineer did not succeed in sufficiently slowing his consist, as became apparent to him some twenty-four seconds before the unit came to a full stop, virtually at the point it hit the derail. He therefore initiated a full emergency brake application, some twenty-four seconds before the train stopped. What the record reveals, therefore, is that for a total period of close to one minute, namely fifty-four seconds, various brake applications were made, and were made in a manner normal to the conditions then apparent to the locomotive engineer. The initial brake application was soon followed by the application of the independent brakes and thereafter the emergency brake application. It is only after the emergency brakes were applied, as appears from the download, that the movement began to slow, transitioning from eight miles per hour to seven miles per hour and six miles per hour after a lapse of some ten seconds.

The Union's representatives question the condition of the braking system of the locomotive unit. In that regard they point to two elements. The first is the statement of the locomotive engineer taken during the course of his own disciplinary investigation, indicating that he encountered a certain slow response in the braking of the train during the course of the working day. The second element, apparently unchallenged by the Company, is that following the incident which is the subject of this discipline, the brake shoes on the locomotive were immediately replaced.

The Arbitrator appreciates that the grievor, as conductor, remained at all times responsible for the movement of his consist. However, the evidence indicates that to all outward appearances, given the load being pulled and the speed and distances involved, the actions taken by the locomotive engineer were consistent with normal train handling practice for the conditions which the grievor and his crew encountered at that time. There is no suggestion in the evidence that the consist was travelling at overspeed or that either the initial brake application or the additional use of the independent brakes came too late. In that circumstance on what basis can it be found that the grievor failed in his duty and obligation? At best, it would appear to the Arbitrator that it might be argued that Conductor Stevenson could have initiated the emergency brake application at some point prior to the locomotive engineer doing so. But given that to all appearances the locomotive engineer was following normal train handling practices for the situation at hand, it is difficult to fault the grievor in that regard.

While the Arbitrator accepts that some disciplinary notation is appropriate as against the grievor's record for what occurred, it is also evident that the suspension of

Conductor Stevenson on the facts of the instant case for a period of twenty-three days constituted an excessive measure of discipline, given his relative responsibility for what occurred and the lingering question as to whether in fact the incident may have been caused, at least in part, by worn brake shoes on the locomotive. In these circumstances I am satisfied that the assessment of ten demerits to the grievor's record would be a sufficient notation of the incident for the purposes of cautioning the grievor in respect of being vigilant as to his train's speed.

The grievance is therefore allowed, in part. The Arbitrator directs that the suspension assessed against the grievor be removed from his record, that he be compensated for all wages and benefits lost, and that a notation of ten demerits be substituted for the incident of January 24, 2005.

February 18, 2008

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