

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

**CASE NO. 3654**

Heard in Calgary, Wednesday, March 12, 2008

Concerning

**CANADIAN PACIFIC RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of 25 demerits to Conductor Randall Chase of Edmonton, Alberta.

**JOINT STATEMENT OF ISSUE:**

On January 13, 2006, Conductor Randall Chase was assessed 25 demerits for allegedly “failing to communicate effectively and ensure your movement was properly protected and all handbrakes were released prior to authorizing an eastward movement, resulting in CP 400286 derailing when shoved past the derail at Gibson’s Pass. Scotford subdivision, during your tour of duty on December 22, 2005.”

It is the Union’s position that the discipline in this circumstance and the penalty of 25 demerits is unjustified, unwarranted and excessive. It is further the Union’s position that the assessment of discipline in this circumstance is discriminatory and disproportionate, in view of the Company’s failure to assess similar discipline for other employees involved.

The Union requests that the discipline assessed to Mr. Chase be removed in its entirety, or in the alternative, that the penalty be mitigated as the Arbitrator sees fit.

The Company has denied the Union’s request.

**FOR THE UNION:**

**FOR THE COMPANY**

**(SGD.) D. OLSON**  
**GENERAL CHAIRMAN**

**(SGD.) C. AYTON**  
**FOR: ASSISTANT VICE-PRESIDENT, FIELD OPERATIONS WEST**

There appeared on behalf of the Company:

M. Thompson	– Labour Relations Officer, Calgary
R. Hampel	– Counsel
R. Wilson	– Assistant Vice-President, Industrial Relations, Calgary
J. Bairaktaris	– Director, Labour Relations, Calgary
R. Merritt	– Manager, Operations, N.M.C.
A. Azim	– Manager, Labour Relations, Calgary

And on behalf of the Union:

M. Church	– Counsel, Toronto
D. Olson	– General Chairman, Calgary
D. Fulton	– Vice-General Chairman,
D. Edward	– Vice-General Chairman
W. McCotter	– Local Chairman, Edmonton
R. Chase	– Grievor

### AWARD OF THE ARBITRATOR

The incident giving rise to the assessment of discipline occurred on December 22, 2005 at 03:00. The employees working this assignment included the grievor, who was acting as yard foreman, the yard helper and the locomotive engineer. The three crew members were involved in the switching of traffic at Gibson's Pass when a derailment occurred. During the initial job briefing, it was discussed that the crew intended to place a cut of cars down the main line and then put a second cut of cars into Gibson's pass. The crew were aware that there were already cars located in Gibson's Pass. The grievor instructed his yard helper to ride cars down the mainline and then stop them at the crossover switch at Gibson's Pass.

According to the grievor, the yard helper did not stop the equipment at the crossover as instructed, but rather at another switch further down the line. The yard helper was now approximately 3-car lengths east of the most eastern switch in Gibson's Pass. When the grievor radioed the yard helper asking if he was close to the derail, the yard helper replied that he was close to the derail but added nothing further. Unknown to the grievor, the yard helper at that point was busy connecting air hoses, having secured the cut of cars.

The grievor, in the absence of any information indicating otherwise from his yard helper, felt that he had sufficient room available to proceed eastward. He did not and was finally told by his yard man, who was still connecting air hoses at the east end of the main track, that the movement was heading towards the derail. The instructions to stop the movement were communicated too late and the car derailed. The employer alleges several safety rule violations. The yard helper was assessed 20 demerits, the locomotive engineer 10 demerits and the grievor was assessed 25 demerits for the incident.

The Company essentially alleges that the grievor failed to live up to his responsibilities of communicating effectively with his yard helper to ensure the movement was properly protected. The union submits that the grievor should not be faulted because he understood that his yard helper was providing him at all times with proper information about the position of the movement relative to the derail. The union suggests that the circumstances are similar to those in **CROA 2230** which states in part as follows:

In the Arbitrator's view the position advanced on behalf on Locomotive Engineer Chubby by the Brotherhood is compelling, on the facts as disclosed. It is well established that Mr. Chubby, as one of the two locomotive engineers assigned to Train No. 36, was responsible for compliance with the requirements of the Uniform Code of Operating Rules and would, technically, have been in violation of Rule 292 and the established procedure respecting Rule 264. However, the circumstances are mitigating as regards his involvement. It is clear that he did not have the knowledge, nor, for all practical purposes, the means to know, that a violation of the rules was either about to take place or was in the course of taking place. At all material times, on the evidence before the Arbitrator, Locomotive Engineer Chubby was carrying out his responsibilities as the second locomotive engineer, in full compliance with the rules. Given that he had no responsibility for the initiative taken by Locomotive Engineer Stock, nor any practical ability to detect or prevent Mr. Stock's actions, it appears to the Arbitrator to be out of keeping with the corrective principles of industrial relations discipline to assess any penalty against Locomotive Engineer Chubby in the circumstances disclosed. He was, very simply, not at fault and cannot be found to have committed any act which was deserving of correction by the application of discipline. For these reasons the Arbitrator sustains the position advanced by the Brotherhood with respect to the discipline assessed against Mr. Chubby.

Unlike the grievor in **CROA 2230**, the grievor did have at his disposal "...the means to know that a violation of the rules was either about to take place or had taken place". It was not enough in my view for the grievor to simply assume the position of the yard helper was being maintained at the east end of the movement. The grievor could have radioed to his helper more frequently and asked follow-up questions about his position. There was a lot of movement on both tracks that evening. Further and more accurate communication by the grievor with the assigned yard helper may have avoided the incident entirely. The Arbitrator therefore finds that there was cause for discipline.

In the end, it was the grievor who had the overall charge of the crew. As such, the penalty for the infraction should reflect his position of authority. On that basis, I believe the penalty imposed on the grievor of twenty-five demerits was not out of line given that the ultimate responsibility for the assignment fell on the shoulders of the grievor.

The grievance is accordingly dismissed.

March 24th, 2008

**(signed) JOHN M. MOREAU, O.C.**  
**ARBITRATOR**