

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

CASE NO. 3655

Heard in Calgary, Wednesday, March 12, 2008

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of 40 demerits and subsequent dismissal for an accumulation of demerits to Conductor Randall Chase of Edmonton, Alberta.

JOINT STATEMENT OF ISSUE:

On October 18, 2006, Conductor Randall Chase was assessed 40 demerits for allegedly “failing to communicate effectively, for failing to perform a proper job briefing, and for failing to ensure your movement was properly protected, resulting in a collision with stationary assignment A59 on the south lead at Edmonton Yard, during your tour of duty on September 29, 2006, a violation of the following rules; CROR 115, CROR 106, CROR General Notice, GOI SSI General Rule C (i), Safety Rules and Safe Work Procedures Transportation Field Operations Employees – Job Briefing en-route.”

The Union contends that the assessment of 40 demerits and dismissal of Mr. Chase is unjustified, unwarranted and excessive in all of the circumstances. The Union contends that the assessment of 40 demerits for the alleged CROR rules in this circumstance is discriminatory and disproportionate, in view of the Company’s failure to assess similar discipline in related circumstances. The Union further contends that Mr. Chase’s circumstances are appropriate for deferred discipline.

The Union requests that Mr. Chase be reinstated without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator see 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 grievor entered the Company service on April 6, 1995 as a trainman and qualified as a conductor on September 1998.

The grievor was working the “Pitch and Catch” on September 29, 2006 as a Yard Service employee. The Union does not dispute that the grievor was in control of the RCLS Belt Pack movement when a side collision occurred with the assignment. The Union claims, however, that the grievor was forthright in his statement and acknowledged that he should have been in the correct position to protect the point. He apologized for his behaviour at the investigation and assured the Company that he would adhere to the rules and regulations in the future. The Employer noted that it was the responsibility of the grievor to conduct an en-route job briefing and to ensure that he and his helper clearly understood the work to be performed. The Employer maintains that the forty demerits imposed on the grievor, which resulted in his termination from employment as a result of accumulation of demerit points, was justified under the circumstances.

This case boils down to whether not the grievor should be given a second chance after numerous safety violations. The last incident for which demerits were imposed occurred less than a year prior to the current incident when the grievor was penalized twenty-five demerits for a safety violation. That discipline was upheld at arbitration (**CROA 3654**). At the time of this incident, therefore, the grievor’s discipline record stood at 55 demerits. The grievor, in addition, also received a caution on May 29, 2006 for failing to ensure his route was properly lined resulting in movement running through a hand-operated track switch.

It should be noted that this employee received a deferred discharge in June 2001 after less than five years in his conductor position. Notwithstanding that serious warning for vigilance if he wished to maintain continued employment with the Company, the grievor continued to accumulate safety infractions. The overriding concern for safety in the workplace has been highlighted in numerous awards of this office. See: **CROA&DR 3454**.

This grievor, who gave articulate and measured testimony on his own behalf at the arbitration hearing, was well versed in the expectations of his Employer concerning the need for observing safety rules at all times. He knew, in that regard, that his position as the senior person on the crew carried with it responsibility for not only the safety of the crew, but also the safe use of equipment by the crew, including himself. One can only infer from the continued examples of the grievor’s rules violations that he is ambivalent about his responsibilities when placed in a crew chief assignment. There is no room for ambivalence to one’s assigned duties of the kind grievor has demonstrated in this case and in the recent past.

Notwithstanding the grievor’s immediate admission of responsibility, this is not a case where mitigation of penalty is appropriate. With more effort and attention, the grievor, in my view, could have avoided his precarious employment situation. Instead he chose to continue along the path of carelessness and indeed often recklessness in the application of Company safety rules. That attitude can have no place in a workplace of this kind where teamwork and safety concerns remain paramount. In that regard, I note the comments of this office in **CROA 3454**:

Although the grievor has long service with the employer, she has been unable to live up to the expectations of an employee holding an RTC position with this Company. She has been provided with several chances, particularly in recent years, to improve her performance but unfortunately has made repeated errors, including cardinal rule violations, which, but for the other systems in place, could have had endangered the safety of other Company employees and the public. The result is that the grievor can no longer be trusted to perform to the high standards the Company expects of an RTC. On that basis, and for all the above reasons, the grievance is dismissed.

Having accumulated twenty-five points for a safety violation less than a year prior to the current breach, which left the grievor on the precipice of dismissal with fifty-five demerit points, it was not unreasonable for the Employer to increase his discipline for a similar violation to the forty demerit point mark.

Under the circumstances, I see no reason to mitigate the penalty and the grievance is dismissed.

March 24, 2008

(signed) JOHN M. MOREAU, Q.C.
ARBITRATOR