

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

CASE NO. 3656

Heard in Calgary, Wednesday, March 12, 2008

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of 50 demerits and subsequent dismissal for an accumulation of demerits to Conductor Bart Balosky of Calgary, Alberta.

JOINT STATEMENT OF ISSUE:

On October 25, 2006, Conductor Mr. Balosky was assessed 50 demerits for allegedly “operating a locomotive when not qualified to do so, for failing to ensure locomotive CP 9644 was set off in compliance with the operating rules, for failing to communicate and ensure the west end of the south main line switch at Keith was restored to normal position resulting in a main line switch being left in reverse position, for detrainning off moving equipment, during your tour of duty that commenced on October 11, 2006, on the Laggan subdivision, while employed as a Conductor on train 106-10, a violation of the following rules: GOI-2, Section 15, item 5.0, GOI-2, Section 14, item 4.0, GOI-1 SSI General Rule C (i), Safety Rules and Safe Work Procedures Transportation Field Operations Employees; Rights and Responsibilities 1 (a), Entraining and Detrainning Equipment T-11, CROR 104 (b), CROR 106 (d), CROR General Notice, and CROR General Rule A (i) and (vi).”

The Union contends that the assessment of 50 demerits and dismissal of Mr. Balosky is unjustified, unwarranted and excessive in all of the circumstances.

The Union requests that Mr. Balosky be reinstated without loss of seniority and benefits. In the alternative, the Union requests 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:

J. Bairaktaris	– Director, Labour Relations, Calgary
R. Hampel	– Counsel
R. Wilson	– Assistant Vice-President, Industrial Relations, Calgary
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
R. Maygard	– Local Chairman

B. Balosky

– Grievor

AWARD OF THE ARBITRATOR

The grievor entered the Company's service in July 1995 as a tradesperson. On December 2, 2002, the grievor transferred to the running trades. He qualified as a conductor and was working towards becoming a locomotive engineer.

The main facts are not in dispute. The grievor was required to set off the tail end remote locomotive at the west end switch of Keith Yard. At the debriefing prior to commencing operations, the grievor had already discussed with the crew how he would detrain at the Keith Yard switch, cut off the remote and move the train eastward. The grievor actually detrained at a speed of around 5.0 mph. He then gave instructions to his locomotive engineer to stop the train at the point where the remote was positioned just west of the switch. After uncoupling the remote, the grievor gave further instructions to the locomotive engineer to pull the remainder of the train ahead just east of the switch in order to line up the switch for the siding. After lining the switch for the siding, the grievor proceeded to operate the remote locomotive over the switch and into the yard track. The grievor then got into a taxi and was driven to the front end locomotive. Before getting into the taxi, however, the grievor left the main track switch in the reversed position and also left his switch keys in the main track switch lock.

The grievor admitted at his investigation that there were no excuses for the mistakes he made during his tour of duty. The grievor's discipline at the time of the incident stood at thirty-five demerits and the issue here is really whether or not the grievor should be given a second chance to return to work despite the serious nature of his transgressions.

The Employer noted that detraining in motion is a cardinal safety rule violation. Although serious, this offence in my view is the least serious infraction committed by the grievor during his tour of duty. Although the grievor had aspirations to become a locomotive engineer, he had no authority or qualifications to undertake any movement of the remote locomotive as he did on October 11, 2006. There certainly is no evidence in that regard that this was an emergent situation where the grievor was called on short notice to take charge of the remote. Rather, the grievor, on his own initiative, took responsibility for the movement of equipment that did not fall within the purview of his assigned duties. Of even more concern, however, are the grievor's actions with respect to the switch. The grievor did not initially communicate to his engineer that the switch was lined and locked in the reverse position. After moving the remote locomotive, he then forgot his switch lock keys in switch. His switch keys can be used to unlock all main track switches. It is fortunate in this case that the error was discovered before any harm or damage occurred in the general area of the incident.

The grievor tabled a letter from a supervisor during the time when he was employed as a machine operator for the Company. The letter speaks to the fact that the grievor was a hard worker and got along well with his fellow employees. In addition, the Union noted in its submission on mitigation, that the grievor, who is 31, had sought counselling and assistance at the time of the events leading to his discharge for family problems and a gambling addiction. Although the grievor's personal circumstances are important considerations, his reckless behaviour in my view has undermined the bond of trust required between the Company and its running trades. As noted in **CROA 1521**, gross misconduct in the absence of a reasonable explanation merits a severe disciplinary response.

The grievor works independently as a conductor and must be trusted to conduct himself at all times in a safe manner. By his own admission, he clearly did not do so in this case. Despite his relatively short service record as a conductor, the grievor has a record for prior safety rule violations, including several cardinal rule violations. He was well aware that any further serious safety violation could jeopardize his employment, given his standing at sixty demerits. Rather than focus on the job at hand, the grievor, has regrettably put himself in a position where he can no longer be counted on with any confidence to perform his duties at a level of safety required of someone in his position.

For these reasons, the grievance is dismissed.

March 24th, 2008

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