

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

CASE NO. 3657

Heard in Calgary, Wednesday, March 12, 2008

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal of 10 demerits to Locomotive Engineer M. Jaeger for sustaining a workplace injury.

UNION'S STATEMENT OF ISSUE:

On April 8, 2005, Engineer Jaeger suffered a workplace accident and sustained an injury to his right knee and left shoulder.

On June 28, 2006, Engineer Jaeger attended an investigation in connection with the April 8, 2005 injury and the frequency of his injuries. Following this investigation, the Company issued 10 demerits for allegedly failing to observe a hazard resulting in his fall and subsequent injuries.

It is the Union's position that there are no grounds for discipline in the circumstances and that the penalty of 10 demerits is unjustified, unwarranted and excessive. The Union contends that the assessment of discipline for sustaining a workplace injury violates the collective agreement, the *Canada Labour Code*, the *Canadian Human Rights Act* and *BC Workers' Compensation Act*. The Union further contends that the June 28, 2006 investigation was not held in a fair and impartial manner.

The Union requests that the discipline assessed to Engineer Jaeger be removed in its entirety or, in the alternative, be substituted for such lesser penalty as the arbitrator sees fit.

The Company disagrees and denies the Union's request.

FOR THE UNION:

(SGD.) D. R. ABLE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. Dorais	– Labour Relations Officer, Calgary
R. Hampel	– Counsel
R. Wilson	– Assistant Vice-President, Industrial Relations, Calgary
J. Bairaktaris	– Director, Labour Relations, Calgary
A. Azim	– Manager, Labour Relations, Calgary
J. Christie	– Manager, Locomotive Fuel Conservation, Calgary

And on behalf of the Union:

M. Church	– Counsel, Toronto
D. Able	– General Chairman, Calgary
D. Delacherois	– Local Chairman, Vancouver

A. Werbiski
G. Edwards

– Local Chairman, Red Deer
– Sr. Vice-General Chairman, Revelstoke

AWARD OF THE ARBITRATOR

The allegation against the grievor is that he failed to observe a hazard while walking into the booking-in-room on April 8, 2005. The facts are that the grievor fell on a piece of 8 1/2" x 11" paper resulting in injuries to his right knee and left shoulder. The Employer alleges that the piece of paper was in plain view on the floor and that the grievor could have avoided injury if he was paying attention.

The grievor indicated in his statement that he was walking from the mailbox area in the office back towards a co-worker who he was talking to him at the time. He stated that, as he approached the centre table in the booking room, he somehow slipped and lost his footing and fell. He further stated that he jumped back almost immediately and noticed a slight pain in his upper left shoulder and that his right knee stung slightly. The grievor stated that he was unaware of the reason for his fall. After five or 10 minutes, the grievor's right knee began to swell and he also noticed pain in his upper left chest. The grievor was off work and did not return to his duties until late June 2006.

The grievor was hired in July 1978 and promoted to the position of locomotive engineer on June 3, 1982. During that time, he has sustained a number of on-duty injuries and been the subject of numerous disciplinary assessments, four of which were related to safety. Although the grievor's work-related injury record is evidently a source of concern for the Employer, each case must be decided on its merits, keeping in mind all the circumstances of the case.

After considering the evidence, the Arbitrator finds that this is a case of an individual who inadvertently slipped on a piece of paper in an open business office area. He failed to cast his eyes on the floor to see the piece of paper, slipped and hurt himself. I do not find this to be an appropriate case to attribute fault or suggest there was an overriding duty on the grievor to have acted more prudently under the circumstances. Simply put, an accident occurred which is not attributable to the negligence or carelessness of the grievor.

For the reasons stated, I do not find there is cause for discipline. The grievance is upheld and the 10 demerits imposed shall be removed from the grievor's record.

March 24, 2008

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