

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

CASE NO. 3658

Heard in Calgary, Wednesday, March 12, 2008

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal of 25 demerits assessed to Locomotive Engineer M. Jaeger and subsequent dismissal for accumulation of demerits.

UNION'S STATEMENT OF ISSUE:

On July 3-4, 2006, Locomotive Engineer Jaeger was working as locomotive engineer in Vancouver Intermodal Terminal when he allegedly failed to ensure his movement was in compliance with all operating rules.

On July 13 and July 17, 2006, Locomotive Engineer Jaeger attended investigations in connection with the July 3-4 tour of duty. Following these investigations, the Company issued 25 demerits for allegedly failing to ensure his movement operated in compliance with all operating rules.

It is the Union's position that in the circumstances the penalty of 25 demerits is unjustified, unwarranted and excessive. It is further the Union's position that the assessment of discipline in these circumstances is discriminatory and disproportionate in view of the Company's failure to assess any discipline in related circumstances.

The Union requests that the discipline assessed to Locomotive Engineer Jaeger be removed in its entirety and requests that Locomotive Engineer Jaeger be reinstated without loss of seniority and benefits, and that he be made whole for all lost earnings with interests. In the alternative, the Union requests that the penalty be mitigated as the arbitrator sees fit.

The Company disagrees and denies the Union's request.

FOR THE UNION:

(SGD.) D. R. ABLE

GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) C. AYTON

FOR: ASSISTANT VICE-PRESIDENT, OPERATIONS WEST

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

AWARD OF THE ARBITRATOR

The grievor entered the service of the Company in July 1978 and has held the position of locomotive engineer since June 1982. The incident giving rise to the discipline occurred on July 3-4, 2006 while the grievor was working the Vancouver Intermodal Facility (VIF) assignment.

The grievor exceeded the permissible track speed on several occasions during his tour of duty as revealed during a random download review from the Q-Tron event recorder. After hearing the evidence, the Arbitrator is satisfied that the speedometer was accurately recording the speed of the train and that the event recorder was also accurate to within a small margin of error of less than 1.5 mph. Prior to this shift, the grievor had not worked at the VIF for over a year. The grievor had been off work from April 8 to June 26, 2006 for a work-related injury.

The Employer maintains that this was not a case of momentary aberration but that the grievor's conduct was deliberate and repetitive. The Employer further maintains that the grievor was fully aware of the operating rule requirements prohibiting him from exceeding the proper speed limits. From the Employer's perspective, the grievor's 28 years of service should have made him a seasoned employee and well-versed in the consequences of his failure to observe the speed operating rules. The grievor maintained during his investigation that he has never been warned before this incident that his speed was excessive and, further, that no one ever told him at any time that his manner of operation was against the local policy. He further indicated at his investigation that this was his first shift at VIF in over a year and that he had just returned from a three-month absence. He also noted in his statement that, during his absence, his supervisor had briefed all employees at the VIF in November 2005 about proper track speed.

As noted in **CROA 2951**, it has long been recognized that speeding infractions can be the basis for serious discipline. Although the grievor had just returned to the workplace after a work-related absence and had not been assigned to the VIF for over a year, it was still incumbent upon him to observe the posted speeds and operate his locomotive within those speed limits. The burden does not lie with the Employer on an ongoing basis to remind its running trade employees, like the locomotive engineers, particularly someone with the grievor's tenure, to be aware of and observe the required operational speeds for any given assignment. That, of course, excludes any changes to assignments that might not otherwise have been disclosed to employees, but there is no evidence of that in this case. The grievor, in short, failed to observe the posted speed limits as alleged by the Employer and is deserving of discipline.

Having found the grievor to have failed in his duties, the issue remains of the appropriateness of the 25 demerit penalty which effectively caused the grievor to lose his employment with an accumulated 75 demerits. The grievor's record stood at 50 demerits prior to this incident, the last 10 demerits being assessed over the incident which was the subject of **CROA 3657** where the Arbitrator upheld the grievance and nullified the penalty. The grievor's record prior to the current incident thus stands at 40 demerits for all intents and purposes.

Is this an appropriate case to consider a penalty reduction? The grievor, to begin with, is a long service employee of some 28 years. He has not been disciplined for safety violations for the previous 20 years. This was also the first occasion in his lengthy career that the grievor has been disciplined for excessive speed. Under the circumstances, the Arbitrator finds that an appropriate disposition would be 15 demerits, which leaves his cumulative record standing at 55 demerits.

The grievor is to be reinstated to the service with his seniority credits restored. This is not a proper case, however, to order compensation. The grievor, whose record stood at 50 demerits prior to this infraction, was aware that he had to be very attentive to his duties or risk losing his employment. In addition, the arbitrator notes that the offence involved a cardinal rule violation involving speeding. It would send the wrong message out to other employees in the service if compensation was allowed in a case such as this involving several instances of speeding violations during the grievor's tour of duty.

March 24, 2008

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