

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

CASE NO. 3671

Heard in Montreal, Tuesday, 13 May 2008

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

The assessment of a seven (7) day suspension to Janice M. Storla of Saskatoon, Saskatchewan for violation of CRC Rule 104.5(b) on January 24th, 2005.

UNION'S STATEMENT OF ISSUE:

On January 24th, 2005 Janice Storla was working as Assistant Conductor (Yard) on assignment YS K605-23. This assignment had completed its assigned work in the "A" Zone and was proceeding towards the main line in order to return to Saskatoon Yard. As the locomotive approached the derail, the engineer applied the brakes preparing to stop. The locomotive did not stop in time however, resulting in the derailment of one set of wheels.

Following an investigation, Janice Storla was assessed a seven (7) day suspension for violation of CRC Rule 104.5(b).

The Union submits that the assessment of a one week suspension is excessive given Ms. Storla's limited role in the derailment and the fact that her work record was free from discipline at the time.

The Union requests that the suspension be expunged and replaced with an assessment more appropriate in the circumstances.

The Company has denied the Union's request, without discussing the matter and without providing a substantive response to the grievance.

FOR THE UNION:

(SGD.) R. S. THOMPSON
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

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| K. Morris | – Manager, Labour Relations, Edmonton |
| J. Newton | – Superintendent, Operations, Saskatoon |
| B. Laidlaw | – Manager, Labour Relations, Winnipeg |
| D. Crossnan | – Manager, Labour Relations, Prince George |
| P. Payne | – Manager, Labour Relations, Edmonton |
| A. Daigle | – Manager, Labour Relations, Montreal |

And on behalf of the Union:

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| D. Ellickson | – Counsel, Toronto |
| R. S. Thompson | – General Chairperson, Edmonton |
| G. Ethier | – General Chairperson, Sault Ste. Marie |
| R. A. Hackl | – Witness |
| J. Storla | – Grievor |

AWARD OF THE ARBITRATOR

The grievor, who is forty years old, had sixteen years of service with the Company but, at the time of the incident, had worked only eight years in the running trades due to layoff and a very serious on-duty injury.

On January 23, 2005 the grievor was working as the assistant conductor on site at the Saskatoon Yard. She was on a conventional assignment working with a locomotive engineer and yard conductor. After completing the shift assignment, the three crew members positioned themselves in the lead locomotive and were to return to the yard with five empty cars. The crew commenced moving towards the main line where they were to stop and obtain proper authority to enter the main line. Upon reaching a speed of 8 mph, the engineer applied the air brakes but the movement did not slow down after a distance of just over 260 feet. The engineer then made a further brake application while at the same time increasing the independent brake application. The train still did not slow down and the engineer initiated an emergency brake application. The movement was unable to stop in time to avoid running over a derail, which in turn derailed the wheels on the lead locomotive. The grievor indicated in her statement that there was no prior discussion amongst the crew members as to who was assigned the task of placing the derail in a non-derailing position. Her recollection was that the derail was not an issue because it had already been restored to the derailing position.

The Company noted that the grievor violated the same CROR rule just two months prior to the current incident. She was given a written reprimand for that incident. The Company submits that the imposition of a seven day suspension for a similar offence reflected a proper application of the principles of progressive discipline. The Union does not dispute that some minor discipline is warranted but maintains that the penalty is entirely excessive under the circumstances. The only other discipline on the grievor's record was 10 demerits for an operational issue in 1999. More importantly, the Union maintains that this Office has already reviewed the same facts at the arbitration hearing of Conductor P. Stevenson in **CROA&DR 3645** where ten demerits were assessed in lieu of a thirty day suspension. The presiding arbitrator, as the Union points out, reduced the penalty in part because of his finding that the "... incident may have been caused, at least in part, by worn brake shoes on the locomotive". The arbitrator also took into account, in reducing the penalty, that the grievor only had "relative responsibility" for what occurred.

Taking up the last point, I share the view that the safety of the movement involves a shared responsibility on the part of the assigned conductor, assistant conductor and engineer. On that basis, the grievor was responsible, in part, for the rule violation. But there are a number of mitigating factors in this case. To begin with, I adopt the fact-finding of the presiding arbitrator in **CROA&DR 3645** that the incident may have been in part the result of worn brake shoes. The evidence introduced before me that only two brake shoes were replaced on the locomotive does not, of itself, support a different finding in that regard. Even in the absence of this finding, I find that the suspension imposed of seven days was excessive.

The grievor had only one written warning on her record at the time of the incident, apart from an incident for which she was assessed ten demerits in 1999. Although the grievor does maintain some responsibility for the incident in her capacity as the assistant conductor, it was certainly no greater than that of the other two crew members. The appropriate penalty for this employee should be comparable under the circumstances to that imposed on the conductor. Accordingly, the grievance is allowed. The seven day suspension shall be removed from the grievor's record and be substituted with a penalty of ten demerits. In addition, the grievor shall be compensated for all lost wages and benefits.

May 20, 2008

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