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

# **CASE NO. 3672**

Heard in Montreal, Tuesday, 13 May 2008

Concerning

# CANADIAN NATIONAL RAILWAY COMPANY

and

# UNITED TRANSPORTATION UNION

### EX PARTE

#### **DISPUTE:**

The assessment of a thirty (30) day suspension and restriction as an Assistant Conductor to Janice M. Storla of Saskatoon, Saskatchewan for violation of GOI Section 8, Item 12.1; GOI Section 4, Item 4.1(a)(ii); CROR General Rule A (iii) & (iv); CROR General Rule C(i); CROR General Rule D; CROR 106(d): and CROR 101(b), causing damage to Kayway Industries fall arrest protection structure, while working as the Assistant Conductor on the 22:55 work assignment YSK63 of March 7, 2005.

# UNION'S STATEMENT OF ISSUE:

Janice Storla was working as Assistant Conductor (Yard) on assignment YSK63 on March 7th 2005. During this tour of duty Ms. Storla and her crew picked up an intermodal car that had been set off by a train as "bad order". Ms. Storla's crew continued their required duties switching and spotting in the "A" Zone. While spotting Kayway Industries the intermodel car struck the overhead fall arrest support, damaging it.

Following an investigation Janice Storla was assessed a thirty (30) day suspension and restricted as an Assistant Conductor for six months.

The Union requests that the discipline assessed to Ms. Storla be substantially reduced given her limited role in the incident and previous discipline record, as well as citing several mitigating factors.

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

#### FOR THE UNION:

G. Ethier

#### (SGD.) R. S. THOMPSON GENERAL CHAIRPERSON

There appeared on behalf of the Company:

- Manager, Labour Relations, Edmonton
- Superintendent, Operations, Saskatoon
– Manager, Labour Relations, Winnipeg
- Manager, Labour Relations, Prince George
– Manager, Labour Relations, Edmonton
- Manager, Labour Relations, Montreal
– Counsel, Toronto
- General Chairperson, Edmonton

- General Chairperson, Sault Ste. Marie

R. A. Hackl	– Witness
J. Storla	– Grievor

#### **AWARD OF THE ARBITRATOR**

The grievor was working as an assistant conductor in March 7, 2005. The grievor and her crew reported to work together and were given their work assignments. Within the lists of assignments was SA 07, which is leased by Kayway Industries, with instructions to pull three of the five cars on spot at that location. A handwritten note also indicated the following: "NOTE: DTTX 61515 ON SEARS LEAD, PULL INTO C-YARD (WATCH SNOW CONDITIONS AROUND CAR)".

The crew first picked up the Intermodal double stack container car DTTX 61515 from track SA 02. The crew then spotted several other customers, including picking up four cars from track SA 07, three of which were to return to the Saskatoon Yard and the last one to be re-spotted in SA 07. The crew sent the three cars towards SA 01 and then went back to SA 07 to re-spot the last car. The movement now consisted of a hopper car that was to be re-spotted, the intermodal car, a box car and the locomotive. The grievor was positioned on the south side of the leading end of the hopper car while the conductor was on the north side of the leading end of the same car. While moving eastward, both the conductor and the grievor heard a loud crash and stopped the movement. They discovered that the intermodal car had struck three fall protection baskets and one large steel structure poll. These fall arrest structures, which are very tall and very visible, were located on track SA 07 for the use of Kayway Industries.

The grievor and the conductor determined, subsequent to the accident, that their movement could still be operated safely. They secured the car to be spotted in track SA 07 and pulled out of the track. The crew then returned to the Saskatoon Yard at 06:30 hrs March 8, 2005. The yard conductor completed a rail accident report regarding the damage to the fall arrest structures and placed it under the door of the local trainmaster's office. The Company picked up the report the following morning and reported it to Kayway industries.

The Company alleges that the grievor breached several GOI and CROR rules. The Union does not deny that rule violations occurred but maintain that the evidence does not support all the Company's allegations. In that regard, the union submits that a number of the alleged rule breaches relate to the fact that the incident was not promptly reported after it occurred.

The grievor stated at the investigation that the crew did not realize that the intermodal car was of excessive height and, accordingly, had never planned any special handling for its movement. A picture of the intermodal car was introduced into evidence. It is clear to any outside observer that the intermodal car, which is made up of two stacked container cars, was positioned to possibly strike the fall arrest structures as the movement proceeded down the SA 07 track. The crew should have been more prudent, as the grievor in hindsight admitted at the investigation, in their preparation for the handling of the movement.

Equally disturbing in this case was the lack of attention paid to the reporting requirements set out in both the CROR and GOI rules. In particular, simply slipping the accident report under the door of the supervisor at the end of the shift was inappropriate and falls short of satisfying CROR General Rule A (iii) and (iv), which requires employees to "promptly" report any violations of any general operating instruction. The evidence is that the Company first heard about the accident from Kayway Industries rather than from the crew members themselves. This lack of timely reporting left the Company in the embarrassing position of being notified by its own customer of the accident before having the opportunity to first investigate the nature of the incident and the attendant property damage.

While the grievor is charged with the violation of various GOI and CROR rules as the result of the one incident, those rules and regulations all concern the prevention and reporting of accidents in a safety-sensitive industry. Her failure in that regard, along with that of her crew, resulted in the ensuing accident which could have been easily prevented.

In my view, the appropriate disciplinary response in light of the breach of both the CROR and the GOI rules, is a period of suspension. The grievor's record, as recorded in **CROA&DR 3671**, stands at ten demerits. Bearing in mind that the incident resulting in the ten demerits occurred just two months prior to the current incident, I find that the appropriate discipline under the circumstances is a three day suspension. Accordingly, the grievance is allowed in part. The thirty day suspension will be substituted with a three day suspension. The grievor shall otherwise be compensated for all lost wages and benefits and have her seniority credits restored.

May 20, 2008

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