

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3679**

Heard in Montreal, Tuesday, 9 July 2008

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Assessment of 10 Demerits to Conductor Edward Page.

UNION'S STATEMENT OF ISSUE:

On October 24, 2007, Conductor Page was required to attend a Company investigation in connection with circumstances surrounding: "your alleged failure to comply with rule 101 (d) resulting in a side swipe between CAN 405246 & TILX 100090 @ JC36 switch on September 18/07".

Mr. Page, subsequent to the investigation, was assessed 10 demerits.

It is the Union's position that the discipline assessed, in consideration of all the factors relating to this matter, was unwarranted but in any event, too severe. The Union is requesting the removal of the discipline from Mr. Page's record. In the alternative, the Union requests that such discipline be commensurate to the incident.

The Company disagrees.

FOR THE UNION:

(SGD.) G. ETHIER
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

R. A. Bowden	– Manager, Labour Relations, Toronto
D. VanCauwenbergh	– Director, Labour Relations, Edmonton
B. Hogan	– Manager, Labour Relations, Toronto
J. Krawec	– Manager, Labour Relations (Ret'd)

And on behalf of the Union:

M. Church	– Counsel, Toronto
G. Ethier	– General Chairperson, Sault Ste Marie
G. Bates	– Vice-President, Canadian Legislative Director, Ottawa
G. Gower	– Vice-General Chairperson,
M. Serieska	– Legislative Representative, Niagara Falls
J. Lennie	– Local Representative, Niagara Falls

S. Pommet
E. Page

– Local Chairperson, Montreal
– Grievor

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not in dispute. Conductor Page was in charge of switching cars into track JC-36 at Port Robinson on September 18, 2007. He had the assistance of a locomotive engineer on the head end of his movement and an assistant conductor, Kevin Shewfelt, who was handling the switches to the storage tracks into which cars were being placed.

The evidence reveals that when the grievor released cars CNA 405246 into track JC-36 it failed to couple to the last car standing in that track. Because both cars had flexible draw bars, the failure of the knuckles to couple caused the car to be propelled backwards, rolling back out of track JC-36. Unfortunately, Mr. Page had released the second car, TILX 100090 towards the switch into JC-37 when the first car began to roll back out of the storage track. In fact it struck the second car in a side swipe, which caused the ensuing investigation and the assessment of ten demerits against Conductor Page.

In defence of the grievor the Union suggests that the conductor's helper, Mr. Shewfelt, should have effectively saved the situation by returning the switch to tracks JC-36 while the second car, TILX 100090 was rolling towards him. If he had done so, it does not appear disputed that the side swipe would have been avoided as the two cars would have presumably simply coupled together in or near the entrance to storage track JC-36.

The Arbitrator does not consider that suggestion particularly helpful. It would appear that when he was advised of the impending situation over the radio by Mr. Page, Mr. Shewfelt felt an understandable danger for his own person. Rather than manipulate the switch he moved to a safer position. The issue is not whether Mr. Shewfelt could have saved the situation, but rather whether Mr. Page negligently created it.

CROR Rule 101, in part, reads as follows:

101 (d)When switching is performed, precautions must be taken by the crew members to prevent unintended rollbacks and/or fouling of other tracks and equipment.

In the Arbitrator's view it was incumbent upon Mr. Page to ensure that the first car which he released was stable on track JC-36 before proceeding to release the second car. That is particularly so to the extent that the cars that were being switched were equipped with flexible draw bars, and might to that extent be subject to rollback in the event that they should fail to couple. To accept the Union's interpretation of the facts and its view of the obligation of Mr. Page, would be to countenance the rapid fire release of cars into storage tracks with two or more heavy pieces of equipment in motion at the same time. It is difficult to square that interpretation with the content of CROR Rule 101.

The Arbitrator is satisfied that in the case at hand Mr. Page knew, or reasonably should have known, that the equipment which he was switching was liable to rollback in

the event that a coupling should fail. That called for a degree of vigilance against the possibility of a rollback, including the slowing of the process before releasing a subsequent car. In the circumstances I am satisfied that there was a failure of duty on the part of Mr. Page and that the assessment of ten demerits was within the appropriate range of discipline.

For these reasons the grievance must be dismissed.

July 14, 2008

(signed) MICHEL G. PICHER
ARBITRATOR