

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION  
CASE NO. 3680**

Heard in Montreal, Tuesday, 9 July 2008

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**UNITED TRANSPORTATION UNION**

**EX PARTE**

**DISPUTE:**

Assessment of 30 Demerits to Conductor Edward Page

**JOINT STATEMENT OF ISSUE:**

On November 13, 2007, Conductor Page was required to attend a Company investigation in connection with circumstances surrounding: "failure to comply with CROR 112 while yarding A43031-09 in Oakville on November 10, 2007".

Mr. Page, subsequent to the investigation, was assessed 30 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	– Local Chairperson, Montreal
E. Page	– Grievor

### AWARD OF THE ARBITRATOR

The Company assessed thirty demerits against Conductor Page for having failed to secure, by the application of hand brakes, cars which he set out in track OG-33 and OG-26 in Oakville Yard on November 10, 2006. The burden is upon the Company to establish the facts in relation to the alleged rules' infraction by Mr. Page. The grievor was himself present at the arbitration hearing and gave evidence that he in fact did secure two handbrakes on the cars in OG-26 and, having been advised by the yardmaster that there was no need to secure the cars with handbrakes as they would soon be handled by another yard crew, he nevertheless did apply one handbrake to the cars in track OG-33.

No one appeared as a witness for the Company at the arbitration hearing. The Company presented a memorandum to file prepared by Supervisor Derek Colasimone which indicates his impression that there were no handbrakes applied in OG-26, contrary to the evidence given at the arbitration hearing by Mr. Page.

As reflected in earlier awards of this Office, when one party fails to produce a witness, and relies on hearsay, the better evidence is generally that given by the witness who does appear at the hearing. To put it differently, the only *viva voce* evidence provided with respect to the application of handbrakes on the assignment in question is that given by Mr. Page, which is unrebutted by any other evidence which might be subject to cross-examination at the arbitration hearing.

What, then, does the record disclose? Firstly, it does not appear disputed that in fact the yardmaster did instruct the grievor that it would not be necessary to apply handbrakes, as the units which he had put away would soon be handled by another crew. While technically it may be that a yardmaster cannot effectively trump the requirements of CROR 112, the undisputed representations made to the Arbitrator by the Union's representatives are to the effect that it is not uncommon for such a direction to be given, particularly in a busy yard which requires on time delivery, as is the case for the yard servicing the Ford plant in Oakville. While the rule must obviously govern, the instruction of a yardmaster, in a manner apparently tolerated by the Company in the past, must, at a minimum be seen as a mitigating factor.

In all of the circumstances I am satisfied that the assessment of thirty demerits, resulting in the termination of Conductor Page, was substantially in excess of what was appropriate in the case at hand. The Arbitrator therefore directs that the penalty assessed against him be reduced to ten demerits and that he be reinstated into his employment forthwith, with compensation for all wages and benefits lost.

July 14, 2008

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**