

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

**CASE NO. 3738**

Heard in Montreal, Tuesday, 14 April 2009

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the dismissal of Conductor Derek Ingalls.

**JOINT STATEMENT OF ISSUE:**

On August 29, 2007, Conductor Ingalls was working as a Conductor on the Winchester Subdivision when he allegedly failed to ensure his movement was in compliance with all operating rules.

On August 6 and August 11, 2007, Conductor Ingalls attended an investigation and supplemental investigation in connection with the August 29 tour of duty. Following these investigations, the Company dismissed Conductor Ingalls for failing to ensure his movement operated in compliance with all operating rules.

It is the Union's position that the assessment of discipline was too severe and that there are extenuating circumstances that need to be considered.

The Union requests that Conductor Ingalls be reinstated without loss of seniority. The Union is further willing to discuss return to work conditions.

The Company disagrees and denies the Union's request.

**FOR THE UNION:**

**(SGD.) D. GENEREUX**  
**GENERAL CHAIRMAN**

**FOR THE COMPANY:**

**(SGD.) A. AZIM GARCIA**  
**FOR: ASSISTANT VICE-PRESIDENT**

There appeared on behalf of the Company:

J. Dorais	– Manager, Labour Relations, Calgary
R. Wilson	– Assistant Vice-President, Industrial Relations, Calgary
S. Nelson	– Manager, Road Operations
M. Thompson	– Labour Relations Officer, Calgary
B. Lockerby	– Labour Relations Officer, Calgary

And on behalf of the Union:

S. Ataogul	– Counsel, Montreal
D. Colasimone	– Sr. Vice-General Chairman, Montreal
I. Cole	– Local Chairman, Montreal

### AWARD OF THE ARBITRATOR

The grievor was dismissed for alleged violations which occurred while he was on a tour of duty as conductor with Locomotive Engineer Frank Maloney on July 29, 2007. On that date, the grievor and Mr. Maloney left the St-Luc shop at approximately 11:45 with a total of five locomotives and 87 cars. They had an emergency brake application at approximately mile 68 on the Winchester subdivision. The grievor could not recall what was discussed between himself and the locomotive engineer before he detrained to find the problem. The grievor walked back and found the hoses parted between the 50th and 51st cars. The grievor bypassed the three point protection requirement and elected to reconnect the two hoses by placing himself between the two rail cars. In doing so, he risked the possibility of the cars moving on their own momentum which, in turn, could have caused him serious injury.

After coupling the hoses, the grievor asked the locomotive engineer if the air pressure was increasing at the tail end. He was advised that there was no communication with the tail end and that the air flow was in fact going down. Despite this information, the grievor did not inspect the rest of the train to determine if the air pressure had fully returned to the tail end. He felt it looked good from a visual standpoint and then proceeded back to the head end. The grievor then failed to perform a Brake Pipe Continuity test to ensure that the brake pressure was increasing at the rear of the train. Also, no further action was taken by the grievor to determine the reason for the decreasing air pressure and 17 cars were ultimately left standing unprotected at the tail end at mile 68. Further, despite the front to rear communication failure, the grievor did not consider the emergency braking feature to be inoperative. He felt that the communication would restore itself if the train started to move. The communication was never restored and the trailing 20 cars of the movement were dragged 54 miles to Smith Falls, where 51 brake shoes needed to be replaced. The grievor never checked to see if communication had been regained at any time after mile 68 through to Smith Falls.

Shortly after leaving mile 68, the grievor provided the RTC with a train location report at mile 74 and released the track behind him not knowing that the 17 cars were left unprotected on the north main track. As the events occurred in OCS/ABS territory, the RTC had no indication that 17 cars were left occupying the track. Trains are regularly operated in both directions and would have no advance warning if a hazard of 17 cars was present on the track. As the grievor himself admitted at his investigation: "There could have been a potential head-on". This was the first of two cardinal rule violations and his sixth major rule violation of his tour of duty. The grievor also passed two hot box detectors during the last 54 miles of the trip which reported an improper axle count of only 310 axles. The grievor admitted that he did not pay attention to the axle count after passing each hot box detector. This was now his seventh major rule violation for the tour. The grievor also committed his second cardinal rule violation when, despite experiencing a communication failure, the train was operated in excess of 10 mph over the speed limit.

The Union does not challenge the imposition of discipline but submits that it was too severe under the circumstances. The hallmark of the grievor's tour of duty, as the Company submits, is his sustained pattern of indifference to his duties. There were rule breaches from the start of the tour until the end including: ignoring three point rules and then risking life and limb by reattaching the hoses, failing to address reduced air pressure resulting in 17 cars being uncoupled, ruining 51 sets of brakes shoes resulting from a failure to monitor the front and rear end communication and exceeding the speed limits by some 10mph. In addition, and of grave concern, is the risk of a front-end collision in an area where the RTC was not informed of the unattended cars left on the track.

The Company understandably takes a dim view of the events. I agree with their submission that the grievor never attempted to correct his behaviour during his tour of duty and elected instead to ignore the rules, thereby placing others in potential danger. There are really no

persuasive mitigating circumstances. The grievor, with some nine and half years of service, cannot be considered a long-term employee. He has only one prior rules-related disciplinary offence. Nevertheless, his negligence on this single tour of duty has undermined the employment relationship. The grievor deliberately shirked his responsibilities and demonstrated a complete indifference to his duties. Regrettably, given the numerous rule violations and complete disregard for his assignment, he can no longer be trusted to carry out the duties of his safety-sensitive position in the running trades. The grievance is dismissed.

May 5, 2009

**(original signed by) JOHN M. MOREAU, Q.C.**  
**ARBITRATOR**