

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

CASE NO. 3746

Heard in Montreal, Thursday, 16 April 2009

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Assessment of 40 demerit marks to the record of Mrs. Carol Cyr for “infractions to rules 120, 122, 136c and A(iii) during your shift on July 1, 2008” (translation) which led to her discharge for accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

On July 1, 2008, the grievor was involved in four rule violations which resulted in the assessment of 40 demerit marks leading to her discharge for accumulation of demerit marks.

The Union contends that the Company violated the grievor’s right to a fair and impartial hearing, failed to provide a safe and healthy environment and to recognize the grievor’s personal and work related problems. The Union contends that the discipline was excessive and requests that the discipline be removed and that the grievor be immediately returned to service with full seniority and be made whole for all, lost wages and benefits.

The Company disagrees.

FOR THE UNION:

(SGD.) J. RUDDICK
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. GROU
FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

S. Grou	– Manager, Labour Relations, Montreal
D. S. Fisher	– Director, Labour Relations, Montreal
L. Viau	– S&C Supervisor, RTC Centre, Montreal
B. Carrier	– Manager, RTC II, Montreal
L. Savoie	– Work Force Coordinator, Montreal
J-J Lajoie	– Manager, RTC, Montreal

And on behalf of the Union:

J. Ruddick	– General Chairman, Burlington
S. Brownlee	– Vice-General Chairwoman,
M. Boucher	– Local Chairman, Montreal
C. Cyr	– Grievor

AWARD OF THE ARBITRATOR

The grievor qualified as an RTC in 1984, worked as a spare until 1986 and then became a regular RTC in October 1992.

The grievor issued an OSC (“out-of-service”) clearance to Track Foreman Jean Baron on July 1, 2008. She is alleged to have repeated the wrong limits to Track Foreman Baron and in doing so failed to meet the requirements of Rules 120,122 and rule 136(c). The latter rule states:

136 (c) The RTC must verify each written word and digit each time it is repeated. If correct, the RTC will respond “complete”, the time and the initials of the RTC, which will be recorded and acknowledged by the employee copying. The employee copying must acknowledge the complete time by repeating the complete time and the initials of the RTC to the RTC.

The grievor claims that she experienced noise within the RTCC, which in turn drowned out the voice from the field recording. The Arbitrator had the opportunity to listen to two recordings at the arbitration hearing. I agree that although there is evidence of some background noise, it is not intrusive enough to have blocked out the track foreman’s repetition of the track limits. Although the grievor made some attempt to obtain clarification of the limits, she did not obtain sufficient clarification to satisfy the requirements of rule 136(c). The recording, contrary to what the grievor asserts, did not say “*et le mile 70 (sept-zéro)*”, which would suggest that Foreman Baron would have repeated the entire protection limits. In fact, the tape indicates that Foreman Baron only said “*70 (sept-zéro)*”. A subsequent call from a VIA passenger train at 10:20 alerted the grievor that Foreman Baron believed he had protection between miles 88 and 70 when he should have had protection only between miles 86 and 70. The grievor corrected the error at 10:24 when she issued a new OSC. The grievor did not promptly report the incident in violation of General Rule A (iii). She claims that she tried to advise two of the supervisors on duty but that they were otherwise busy. The grievor also claims that she meant to advise the RTC Centre Assistant Manager the following day, as he was aware of the problems she had been experiencing with the radio equipment, but did not do so.

The grievor, in my view, was not paying attention to her duties on July 1, 2008 and was deserving of discipline, particularly for her failure to follow the established communication protocols and ensure the limits were clarified with Mr. Baron. In terms of penalty, the grievor has been the subject of escalating discipline over the years starting from a written warning through to a suspension. She was also discharged and then subsequently reinstated on a two-year last chance agreement dated March 7, 2008, after serving a suspension from September 21, 2007 through to March 24, 2008. The grievor had only been back on the job for some four months when she was involved in the current incident.

The Arbitrator agrees with the Company’s position that RTCs must at all times be meticulously attentive to their duties. It is crucial that track limits be confirmed in the manner provided by the rules. The consequences of any misunderstanding in communication, however slight, can have serious repercussions. In this case, an accident could easily have occurred as a result of the grievor’s failure to ensure the track limits were properly repeated to Track Foreman Baron. I nevertheless have some sympathy for the grievor, given the fact that she is an experienced RTC with 24 years of service and had only been back on the job for a few months after serving a 7 month suspension. Her failure to immediately report the incident, on the other hand, is an aggravating factor which calls into question her overall honesty.

I would add that there is no evidence adduced before me that the grievor was subject to an improper investigation and I therefore make no ruling in that regard. Further, the concerns expressed over the Voice Communication Control System are not sustainable in this case given

that the conversations could be understood, albeit with some background ambient noise. The issue of job stress is one that is attendant with the position and is not a mitigating factor in this instance.

After considering both the aggravating and mitigating factors, I am prepared to substitute the penalty of 40 demerits with a period of suspension, without compensation or loss of seniority. The grievor's disciplinary record stands at 30 demerits. The effect of the last chance on the grievor's continued employment is dealt with in **CROA 3747**.

May 4 , 2009

(signed) JOHN M. MOREAU QC
ARBITRATOR