

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

CASE NO. 3750

Heard in Montreal, Thursday, 16 April 2009

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Assessment of twenty-five (25) demerits to Conductor K. Moodie of Edmonton for violation of CROR 104, 106, and 115 which resulted in derailment of two (2) cars on train M31451-16 at Scotford Yard on August 16, 2008 which resulted in her dismissal from the Company for accumulation in excess of sixty (60) demerits.

COMPANY'S STATEMENT OF ISSUE:

On August 16, 2008, the grievor was working as a Conductor on the 1500 Scotford Yard assignment 602. At approximately 23:45, train M31451 16 derailed two cars at Scotford upon initial departure.

Through the investigative process, it was determined that the grievor and crew had failed to examine the points and the target on the switch they were operating over to ensure that the switch was properly lined for the route to be used and to ensure that the movement was properly lined prior to proceeding.

Ms. Moodie was assessed twenty-five (25) demerits for her responsibility in this matter that resulted in her dismissal for accumulation of over sixty (60) demerits.

The Union contends there were mitigating factors and that the discipline should be expunged or reduced to a lesser degree and the grievor re-instated.

The Company disagrees with the Union's contentions.

FOR THE COMPANY:

(SGD.) P. PAYNE

FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

F. O'Neill – Manager, Labour Relations, MacMillan Yard
R. A. Bowden – Manager, Labour Relations, MacMillan Yard

And on behalf of the Union:

- D. Ellickson – Counsel, Toronto
- B. R. Boechler – General Chairman, Edmonton
- R. A. Hackl – Sr. Vice-General Chairman, Edmonton
- K. Moodie – Grievor

AWARD OF THE ARBITRATOR

There is no real dispute with respect to the facts which led to the discipline of the grievor, who only had one and a half years of service at the time of the incident. The grievor had assumed that the switch was in the same position as it was earlier in the day. The switch had in fact been reversed by a carman who had been working in the area. The grievor subsequently failed to ensure that the switch was properly lined and two cars on train M31451-16 derailed at Scotland Yard upon initial departure from track VC61 in violation of CROR 104, 106 and 115. The only real issue here is whether the measure of discipline is appropriate.

The Company takes the position that the 25 demerits was appropriate discipline and that the grievor's termination as a result of her accumulation of over 60 demerits in less than a year and half of service was appropriate. The Union submits, in a nutshell, that the grievor deserves a second chance to show she can perform up to acceptable standards. The Union points to the fact that the crew were not overly negligent and that the grievor was relying on her brakeman to make sure the switch was properly lined. The Union further notes that the grievor was a new and relatively inexperienced worker and that it takes many years to become a competent conductor.

The grievor has not been a model employee during her short service with the Company. Her record of discipline, which includes prior incidents of CROR rules violations and a previous six month suspension for violation of the Company's Drug and Alcohol policy, stood at 45 demerits at the time of this incident. The imposition of 25 demerits is within the range of discipline for an incident of this nature, as noted in **CROA 3299**, a case which involved a yard foreman with 4-1/2 years of active service who also had a record of 45 active demerits for rule violations.

The grievor's limited length of service is not a mitigating factor which favours her reinstatement. She has not been able to demonstrate over her short tenure with the Company the level of consistent effort and dedication to service that is required of those working within the running trades profession. Moreover, she was already provided with a second opportunity to prove herself during her short career with the Company when she was reinstated after a six month unpaid suspension. She was unfortunately unable to live up to her position requirements after being granted that second opportunity. A direction to reinstate the grievor without compensation again would not be an appropriate remedial order under the circumstances.

The grievance is dismissed.

May 11, 2009

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