

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

CASE NO. 3773

Heard in Edmonton, Tuesday, 9 June 2009

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Assessment of 20 demerits to Conductor Dale Goolcharan of Winnipeg for violation of CROR 115 resulting in derailment of NAHX 455756 over end block, track RV42, Bloom, Rivers Sub, on November 2, 2005 while employed as conductor on train M31251-01.

COMPANY'S STATEMENT OF ISSUE:

On November 2, 2005, Mr. Goolcharan was assigned as conductor on train M31251-01. During his tour of duty, he was required to spot RV-42 however the movement was allowed to travel over the end blocks, resulting in the derailment of car NAHX 455756.

Mr. Goolcharan was assessed 20 demerits for violation of CROR 115.

The Union contends that the discipline should be mitigated to a lesser degree.

The Company disagrees with the Union's contention.

FOR THE COMPANY:

(SGD.) D. CROSSAN

FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

K. Morris	– Manager, Labour Relations, Edmonton
D. VanCauwenberh	– Director, Labour Relations, Edmonton
P. Payne	– Manager, Labour Relations, Edmonton
D. Crossan	– Manager, Labour Relations, Prince George

And on behalf of the Union:

K. Stuebing	– Counsel, Toronto
B. R. Boechler	– General Chairman, Edmonton
R. A. Hackl	– Vice-General Chairman, Edmonton
R. Thompson	– Vice-General Chairman, Edmonton
M. Johnson	– Local Chairman,
D. Goolcharan	– Grievor

AWARD OF THE ARBITRATOR

The incident leading to the assessment of twenty demerits involved a derailment on November 2, 2005. The grievor was responsible for the placement of cars on the customer siding. He lined the movement and then instructed the locomotive engineer to make a reverse movement and spot cars on track RV42. The grievor did not ride the point but rather detrained and then directed the cars being pushed into the track from the ground. The movement was shoved a distance beyond the available track on RV42 resulting in the derailment of the lead car. The grievor admitted responsibility for the incident at his investigation.

The only issue is with respect to the quantum of discipline. The grievor had no active discipline on his record at the time. He had been disciplined on five previous occasions for operating or safety rule violations. The Union points out in that regard that he has only one written reprimand in the previous eight years for violation of an operating rule and a further 10 demerits for failing to wear safety glasses. Given the grievor's 21 years of service, and considering his admission of responsibility at his investigation, I believe this is a case for a reduction of penalty. After consideration of all the facts as well as the case law in this area, I find that a penalty of fifteen demerits to be an appropriate disposition under the circumstances.

June 23, 2009

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