

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

**CASE NO. 3774**

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 CN General Operating Instructions, Section 8, 3.1 & 12.5 on March 14, 2008.

**COMPANY'S STATEMENT OF ISSUE:**

On March 14, 2008, Mr. Goolcharan was assigned as conductor on train 532. During his tour of duty, while detraining Mr. Goolcharan fell to the ground, causing injury to himself. Mr. Goolcharan failed to report the injury immediately as required under Section 8, 3.1.

Mr. Goolcharan was assessed 20 demerits for violation of CN General Operating Instructions, Section 8, 3.1 & 12.5.

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**

This case involves the assessment of 20 demerits as result of the grievor's alleged failure to report an injury.

The grievor was working as a conductor on March 14, 2008. He slipped on some loose ballast while detraining causing him to hit his right knee and buttocks on the ground. The grievor indicated at the investigation that he thought at the time the injury would pass and that he would not be required to report it. He carried on with his trip to the assigned destination but his knee continued to ache as the day progressed. The grievor reported the incident to his trainmaster and filled out an injury report after completing his tour of duty. The Company alleges that the grievor violated GOI, Section 8, 3.1(g) which requires immediate accidents or injuries as well as Section 8, 12.5 for failing to follow proper detraining procedures.

The Company requires that employees be alert to the surrounding conditions when detraining. Although the grievor slipped while getting off the train, I do not necessarily attribute his fall to a lack of caution or carelessness on his part. The cause of the incident had more to do in my view with the loose ballast rather than any other contributing factor, including the grievor's safety glasses. The grievor did not see or feel any immediate signs of an injury at the time of his fall. It was only later in his shift that he began to feel some pain. Accordingly, I do not find the grievor violated GOI 12.5. On the other hand, the grievor fell to ground and, in his own words, "... slipped on ballast banging right knee and buttocks". In my view, the grievor did suffer more than a passing

injury, minor as it may have been, and should have taken steps to alert his supervisor immediately as required under rule GOI 3.1(g). In that way, the area could have been investigated for possible loose ballast, or other related surface faults, and any remedial work undertaken in order to avoid a repetition of the incident.

In terms of penalty, I take into consideration that the violation of rule GOI 3.1 (g) is more of a technical violation given that the grievor did in fact report the incident at the end of his tour. The grievor was also forthright about the incident during his investigation. Under the circumstances, I would substitute the 20 demerit penalty with a warning letter to the grievor that he promptly report all injuries to his supervisor, even though they may appear to be only minor in nature.

June 24, 2009

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