

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

CASE NO. 3775

Heard in Edmonton, Tuesday, 9 June 2009

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Assessment of 30 demerits and subsequent dismissal to Conductor Dale Goolcharan of Winnipeg for failure to protect his assignment between December 10th – 19th, 2008 and December 28th and 29th, 2008.

COMPANY'S STATEMENT OF ISSUE:

Mr. Goolcharan was authorized to return to work on December 10th, 2008 from a medical leave. Mr. Goolcharan failed to return to work on December 10th. On December 20th, 2008 Mr. Goolcharan requested and was granted vacation from December 20th to December 27th. Effective December 27, 2008 Mr. Goolcharan was placed back on the working board from vacation. Mr. Goolcharan did not return to work until December 30th, 2008.

Mr. Goolcharan was assessed 30 demerits for failure to protect his assignment between December 10th and 19th, 2008, and December 28th and 29th, 2008.

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 thirty demerits and subsequent dismissal of Conductor Dale Goolcharan of Winnipeg for failure to protect his assignment between December 10th to 19th, 2008 and December 28th and 29th, 2008.

It is important to note at the outset that the grievor was witness to a crossing accident on September 9, 2008 while working as a conductor. The crossing accident involved a horrific collision between his assigned train and two motor vehicles at a level crossing, resulting in a fatality in one vehicle and severe injuries to passengers in a second vehicle. The accident was unforeseen and the grievor was vigilant in doing what he could at the scene of the accident to assist the motor vehicle passengers until the EMS personnel arrived. He was later diagnosed with post traumatic stress disorder as a result of the September 9, 2008 incident and was on workers' compensation benefits from September 10, 2008 to October 31, 2008 at which time he returned to work on modified duties. The grievor continued to work on modified duties for some five weeks afterwards until December 1, 2008.

The grievor attended a medical appointment on December 1, 2008 and was deemed fit to return to work as of December 5, 2008. The grievor then met on December 6, 2008 with his Superintendent and the Trainmaster to discuss his next assignment. The grievor was subsequently told on December 10, 2008 by the Company that he was fit to return to work as of that day as a conductor on the condition that he

perform his first trip as a “ride along”. The OH&S recommendation in that regard was that the “ride along” restriction could be removed if the grievor did not report any difficulties. The grievor committed during the meeting of December 10, 2008 to fulfilling the terms of his return-to-work authorization.

The grievor failed to complete his initial tour of duty as a “ride along” between December 10th and December 19th. It was not until some three weeks later on December 30, 2008 that Winnipeg Superintendent Martin was made aware that the grievor had failed to complete his initial tour of duty for the nine day period between December 10th to 19th. The grievor, at his own request, had been placed on vacation leave from December 20th to December 27th. The grievor did not complete his tour of duty between December 27th to December 30th. The grievor finally completed his initial “ride along” trip on December 30, 2008.

The Company takes the position that the grievor was absent from work without authority for 12 days in December 2008, without any notice or contact with the Company, during a time he was deemed fit to return to work. The Union maintains that the grievor was not at fault for his absence during this time given the stress resulting from being assigned to the same route on December 10, 2008 where the tragic accident occurred just three months earlier on September 9, 2008.

The Arbitrator finds that the grievor’s failure to report to work for his “ride along” after December 10, 2008 is deserving of discipline. The grievor understood his obligations and it was incumbent on him to report to work as required. The real issue is not whether the grievor’s action merited discipline but rather whether there is cause to

mitigate the penalty of thirty demerits, which turned out to be a culminating incident leading to the grievor's termination. The Union noted that the grievor's relationship with his partner of many years, with whom he had a four year old son, deteriorated during the period subsequent to the September 9, 2008 incident. The grievor himself noted in that regard during his investigation that he went through "unforeseen significant family issues, my emotional state was in turmoil and I used this opportunity to help me resolve my issues".

Although the break-up of a relationship or other family-related issues are not an automatic basis to justify a reduction in penalty, there are compelling circumstances in this case which deserve appropriate consideration. It appears that the grievor, understandably, was working through the substantial shock caused by the level crossing collision. The incident had occurred only three months before he was scheduled to return to work. I am satisfied that his motive for not returning to work is rooted in the unfortunate consequences caused by the shock of the level crossing collision some three months earlier. I am also satisfied on the evidence before me that the effects of the incident contributed to the disintegration of his long-term relationship and the departure of his partner and four year old child.

Bearing in mind all the above, I find the appropriate disposition in this case to be a penalty of ten demerits and the grievor's disciplinary record is to be amended accordingly. The effect of the three grievances, heard concurrently during these sittings as **CROA&DR 3773, 3774** and **3775**, is that the grievor's record will reflect discipline of less than sixty demerits. As a result, the grievor will be reinstated to his employment

with full back pay and no loss of seniority. I will retain jurisdiction should any issues arise with respect to the implementation of this award.

June 24, 2009

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