

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

CASE NO. 3812

Heard in Montreal, Wednesday, 14 October 2009

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of discipline and discharge of Locomotive Engineer Dan Henderson.

JOINT STATEMENT OF ISSUE:

On November 21, 2007, Locomotive Engineer Henderson was working on Train 102-19. On January 3, 2008, he received 45 demerit points.

Subsequent to receiving 45 demerit points for allegations of misconduct, Locomotive Engineer Henderson was discharged for accumulation of demerits under the provisions of the Brown System.

It is the Union's position that the discipline is unwarranted. In the alternative, it is the Union's position that the assessment of discipline is excessive in the circumstances. It is further the Union's position that there exist mitigating factors that need to be considered.

The Union requests that Locomotive Engineer Henderson be reinstated without loss of seniority, wages or benefits and that there are mitigating factors that warrant further consideration. In the alternative, the Union requests that Locomotive Engineer Henderson be reinstated upon such terms as the Arbitrator deems appropriate.

The Company disagrees and denies the Union's request.

FOR THE UNION:

(SGD.) T. BEAVER
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A. A. GARCIA
FOR: ASSISTANT VICE-PRESIDENT

There appeared on behalf of the Company:

D. Corrigan	– Labour Relations Officer, Calgary
B. Deacon	– Labour Relations Officer, Calgary
S. Doyle	– Road Manager
S. Nelson	– Manger, Road Operations
R. Hempel	– Counsel

And on behalf of the Union:

M. A. Church	– Counsel, Toronto
T. Beaver	– General Chairman, Oshawa
J. Campbell	– Local Chairman, Toronto
D. Henderson	– Grievor

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that the record discloses a serious error of judgement and inattention on the part of the grievor. It cannot be disputed that he failed to release the independent brakes on his train on two separate occasions during the course of his tour of duty on the Mactier Subdivision on November 24, 2007. He also failed to monitor a gauge on the panel situated in front of him which would have indicated the level of pressure in the locomotive's brakes, something which would have alerted him to the problem and brought it to an end. In the result, damage resulted to the brake shoes of the two locomotives in question. While the monetary value of the damage is not described as being particularly great, the operating error of the grievor must be acknowledged to have been serious. It would also appear that Mr. Henderson failed to report the brake problem to the Company's centralized locomotive specialist, as required by the Company's General Operating Instructions. He did, however, upon discovering the problem at the conclusion of his tour of duty, report the condition of the brake shoes, which were essentially unserviceable, to the supervisor on duty at the Vaughan Intermodal Facility and he also notified the diesel shop that by reason of the brake problem the engines were not safe to operate.

The grievor had approximately eighteen years of service at the time of the incident which resulted in the assessment of forty-five demerits and his discharge for the accumulation of demerits under the Brown system. Over that time he was previously assessed discipline on some nine occasions for rules violations.

In the Arbitrator's view there are some mitigating factors to be considered. Firstly, it does not appear disputed that neither the grievor nor his conductor sensed any outward indication that there was anything amiss with respect to the locomotives' brakes. Additionally, as stressed by counsel for the Union, while Mr. Henderson did receive discipline in November of 2007 for a rule violation, he was in fact previously free of any discipline for some three and one half years.

In the circumstances the Arbitrator directs that the grievor be reinstated, without loss of seniority and without compensation for wages and benefits lost, with the 45 demerits removed from his record and a suspension from the date of his discharge to the date of his reinstatement to be substituted.

October 29, 2009

(signed) MICHEL G. PICHER
ARBITRATOR