

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

CASE NO. 3819

Heard in Montreal, Thursday, 15 October 2009

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Assessment of discipline to the record of F. R. Boutilier, 15 demerits.

UNION'S STATEMENT OF ISSUE:

On June 24, 2008 the Company held an investigation for an alleged "poor performance while working as a yardmaster at 14:30 hours on May 11, 2008, resulting in Chicago traffic being sent on the 121." Subsequent to this the Company assessed Mr. Boutilier with 15 demerits, alleging that the error was his responsibility.

The Union protests the violation of articles 30 and 32 as well as the Workplace Environment provisions of the collective agreement. The Union contends that the Company failed to follow the principles of the Brown system of discipline. Further the Union contends that these violations render the discipline null and void. In the alternative, the Union submits that the discipline was excessive and unwarranted.

The Company disagrees with the position of the Union.

FOR THE UNION:

(SGD.) J. M. ROBBINS
GENERAL CHAIRMAN

There appeared on behalf of the Company:

A. Daigle – Manager, Labour Relations, Montreal
D. Gagné – Manager, Labour Relations, Montreal

There appeared on behalf of the Union:

J. M. Robbins – General Chairman, Sarnia
F. Boutilier – Grievor

AWARD OF THE ARBITRATOR

The evidence discloses to the Arbitrator's satisfaction that the grievor was careless in the exercise of his duties on May 11, 1998. In particular, he was responsible for giving instructions to train crews building train 121 which was destined to the Brampton Intermodal Terminal. Although it does not appear disputed that he instructed the yard crew to redirect certain cars which were destined to Chicago to another track and that he entered that switch onto the SRS system, in fact the crew never made the move and the cars in question were coupled to train 121 and ultimately delivered to the Brampton Intermodal Terminal, from where it was necessary to forward them on to Chicago. In essence, what is reproached against the grievor is that he failed to make any attempt to verify with the yard crew that they had made the move which he directed them to make.

The Arbitrator is satisfied that there is some basis in the facts for discipline against Mr. Boutilier. The evidence indicates that before departure the train in question would in fact pass before his work station, so that he could arguably conduct some direct verification that the train was properly marshalled. Whether or not he would be required to go that far, the Arbitrator is satisfied that it was incumbent upon him, as the person overseeing the building of the train, to ensure that the Chicago traffic was kept clear of it.

The greater issue is the appropriate measure of discipline in the case at hand. Hired in 1980, the grievor had close to twenty-nine years of service at the time of the events giving rising to this grievance. Prior to 2007 he incurred only fifteen demerits for an incident involving a personal injury. In fact, until shortly before the incident here in question his record stood at five demerits. In the circumstances the Arbitrator is satisfied that a written reprimand would have been sufficient to bring to the grievor's attention the necessity of paying closer attention to the marshalling of cars under his supervision.

The Arbitrator cannot accept the submission of the Union that there was a violation of the duty to conduct a fair and impartial investigation. While objection is taken to certain questions which appear to have been asked by Supervisor M. Hipwell, I am satisfied that a typographical error appears in the record and in fact the investigation was conducted by Operations Officer Stephane Arbour. I am also satisfied that the investigation was sufficiently timely. Nor can the Arbitrator accede to the argument of the Union that the discipline assessed against the grievor was discriminatory as compared to other employees, as that issue was not raised in the Union's *ex parte* statement of issue.

The grievance is therefore allowed, in part. The Arbitrator directs that the fifteen demerits assessed be removed from the grievor's record and that a written reprimand be substituted.

October 29, 2009

(signed) MICHEL G. PICHER

ARBITRATOR