

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

**CASE NO. 3820**

Heard in Montreal, Thursday, 15 October 2009

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The assessment of discipline, effective June 18, 2008, to the record of F.R. Boutilier in the form of 15 demerits.

**UNION'S STATEMENT OF ISSUE:**

On June 18, 2008, Mr. Boutilier was employed as a conductor on train L05911 18. The Company held an investigation on July 04, 2008 for the alleged "inaccurate reporting of work while working as conductor on the L50911 18 on June 18th, 2008." Subsequent to the investigation on July 25, 2008 the Company assessed 15 demerits.

The Union contends that the discipline was unjustified, unnecessary and excessive. The Union also contends the Company's actions were discriminatory considering other discipline assessed. The Union contends that the provisions of articles 30 and 32 were not followed and the Workplace Environment provisions have been violated as the discipline was neither reasonable nor appropriate. The Union contends that the Company also failed to comply with their obligations to follow the Brown system of discipline. The Union requests that all discipline be expunged from the employee's record.

The Company disagrees with the contentions 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 facts in respect of this grievance are relatively straightforward. On June 18, 2008 the grievor was responsible for building Train 407. As there was no yardmaster on duty in Dartmouth it was his responsibility to accurately report the composition and sequence of the cars in the train. In fact when the train left Halifax the following day it was out of rotation on account of an added car which should not have been on it.

In defence of the grievor, the Union notes that Train 407 was in fact assembled in two tracks. The track which was assembled by Mr. Boutilier did not contain the extra car. It was apparently erroneously placed, along with the other cars of the train, into a separate track by another employee, presumably by reason of the fact that the train was too long to be housed in a single track.

While that may be so, the Arbitrator has difficulty with the Union's suggestion that the grievor was nevertheless not responsible for the accurate reporting of the composition of the train and the verification of its component cars. I accept the submission of the Company's Operations Manager that the responsibility entrusted to Mr. Boutilier on the day in question involved ensuring that the Train 407 was properly composed, something which he failed to do.

Nor can the Arbitrator accept the suggestion that the grievor was denied a fair and impartial investigation by reason of the fact that a separate investigation was conducted in relation to the crew which erroneously placed the extra car along with the

segment of cars which were in the other track. The fact that another employee may have been disciplined for the incorrect marshalling of that segment of the train does not have a bearing on the grievor's responsibility, which was the separate responsibility of finally verifying the proper composition of the train, as part of his responsibility to build Train 407.

In the result, the Arbitrator is satisfied that the grievor was deserving of discipline. I am also satisfied that the fifteen demerits assessed were within the appropriate range of discipline for the infraction and that there are no mitigating factors which would suggest a reduction of that penalty.

For the foregoing reasons the grievance must be dismissed.

October 29, 2009

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**MICHEL G. PICHER**  
**ARBITRATOR**