

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

CASE NO. 3824

Heard in Calgary, Wednesday, 11 November 2009

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Assessment of twenty (20) demerits to Conductor Kevin Gelowitz of Melville, SK, for “failure to comply with CROR 101(d) AND CROR 112 ...” while working as yard conductor on April 22, 2008.

UNION’S STATEMENT OF ISSUE:

On April 22, the grievor, Kevin Gelowitz, was working as yard conductor on the 14:00 Belt Pak assignment. While switching in Melville yard, cars that had been previously placed by the grievor rolled back, sideswiping his movement, resulting in a minor derailment.

The Union submits that, while some discipline may be warranted, discharge is excessive in all of the circumstances. The Union requests that the grievor be reinstated and made whole for all losses.

The Company has declined the grievance as untimely.

FOR THE UNION:

(SGD.) R. A. HACKL

FOR: GENERAL CHAIRMAN

On Thursday, 10 December 2009, there appeared on behalf of the Company:

D. Brodie	– Manager, Labour Relations, Edmonton
P. Payne	– Manager, Labour Relations, Edmonton
D. Gagné	– Sr. Manager, Labour Relations, Montreal

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
B. Boechler	– General Chairman, Edmonton
R. Hackl	– Vice-General Chairman, Edmonton

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms, beyond dispute, that the grievor did violate CROR 101(d) and CROA 112. On April 22, 2008 while working as the Yard Conductor on the 14:00 Belt Pack assignment in Melville, Saskatchewan, Mr. Gelowitz was involved in switching rail cars within the Melville Yard. His first move was to switch a single car in to track MA10, and thereafter to move five other cars into track MR05.

Controlling the belt pack unit the grievor pushed car CNLX 10262 into track MA10. He had lightly secured the hand brake to that car, presumably to avoid it moving once it reached a stationary position. In fact, while the grievor was engaged in moving equipment into track MR05 car CNLX 10262 commenced to roll back in the direction from which it had come, eventually sideswiping the grievor's movement in track in MR05, and derailling.

That the grievor violated the rules charged against him is not substantially contested. The sole issue is the appropriate measure of discipline. Following a disciplinary investigation the Company assessed twenty demerits against the grievor. As his prior record stood at forty demerits, that resulted in his discharge.

The Union argues that the grievor has demonstrated his ability to work discipline free for extensive periods of time, stating that he was experiencing a difficult time in his personal life when a number of incidents leading to discipline occurred, eventually culminating in the instant grievance.

With respect, the Arbitrator has some difficulty with that submission. Firstly, the grievor cannot claim excessive long service, having been first hired in 1991. During his seventeen years of service between 1994 and his termination he was disciplined on eight occasions, including his discharge. A review of his record reveals that the Company did apply progressive discipline to him, with his earliest infractions being dealt with by the assessment of demerits in the order of ten and fifteen points. In November 2006 he was assessed twenty demerits for a rule violation during yard switching, and shortly thereafter, on January 6 of 2007, a further twenty demerits for the violation of CROR rule 104.5(b) resulting in a derailment during yard switching. In fact, when a further rules infraction ensued, on January 26, 2007 he was given a seven day suspension for a further violation of CROR rule 104.5, again resulting in a derailment. In fact, prior to the culminating incidents, Mr. Gelowitz's record reflects three separate rules violations involving derailments. Against that record the Company maintains that the fourth and final derailment resulting in his termination for the incident of April 22, 2008 is a culminating incident which appropriately justifies the termination of his services.

On a review of the record the Arbitrator cannot disagree. Notwithstanding the application of progressive discipline by the Company, including the assessment of a suspension for the penultimate incident involving Mr. Gelowitz in January of 2007 to avoid his discharge by the assessment of demerits, the grievor's recurring inattention to carefully observing operating rules resulted in yet another derailment. I do not see in the record before me compelling mitigating circumstances which would justify a reduction in penalty.

For the foregoing reasons the grievance must be dismissed.

December 14, 2009

(signed) MICHEL G. PICHER
ARBITRATOR