

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

**CASE NO. 3825**

Heard in Calgary, Wednesday, 11 November 2009

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE  
RAIL CANADA TRAFFIC CONTROLLERS**

**DISPUTE:**

Appeal of the assessment of 20 demerit marks and subsequent dismissal of Rail Traffic Controller Denise Y. Allison.

**JOINT STATEMENT OF ISSUE:**

On November 14 and November 24, 2008, Rail Traffic Controller Denies Y. Allison attended an investigation and supplemental investigation in connection with her required duties as the Thompson Sub lunch relief RTC on November 10, 2008. More specifically, the required deliverance of GBO C4037 to affected trains. Following these investigations the Company assessed Ms. Allison's record with 20 demerit marks for a violation of CROR Rule 152 – Delivery of General Bulletin Order (GBO). Subsequently, Ms. Allison was dismissed for the accumulation of demerit marks.

It is the Union's position that the assessment of discipline is excessive. It is further the Union's position that there are circumstances surrounding this incident which need to be considered.

The Union request the removal of the 20 demerit marks from Ms. Allison's file and that she be reinstated without loss of seniority and benefits, and that she be made whole for all lost earnings.

The Company disagrees and denies the Union's request.

**FOR THE UNION:**

**(SGD.) J. RUDDICK**  
GENERAL CHAIRMAN

**FOR THE COMPANY:**

**(SGD.) J. M. DORAIS**  
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

- V. White – Assistant Labour Relations Officer, Calgary
- J. Dorais – Manager, Labour Relations, Calgary
- B. Free – Manager, Rail Traffic Control, Calgary

And on behalf of the Union:

- J. Ruddick – General Chairman, Burlington
- S. Brownlee – General Chairwoman Elect,
- K. Essery – Vice-General Chairwoman,
- D. Y. Allison – Grievor

### **AWARD OF THE ARBITRATOR**

Upon a review of the material filed the Arbitrator has considerable difficulty with the position argued by the Union. It is not disputed that a slow order restricting trains to 10 miles per hour while travelling eastwards at Lytton, B.C. on the Thompson Subdivision was in effect on November 10, 2008. That day, while acting as Lunch Relief, the RTC responsible for that territory, Ms. Allison, was responsible for issuing GBO C4037 to three trains approaching the territory, cautioning them as to the need to reduce their speed to 10 m.p.h. or less by reason of a defective frog and the possibility that signals might not be in place on the territory. The record discloses that while she did give the necessary GBO notice to two of the trains, she in fact failed to give any notice to the second train in the sequence, train 804-08. By pure chance the crew of that train overheard her GBO directions to the other two trains, as a result of which they took precautionary steps. Absent that good fortune a very serious mishap could have occurred.

I am satisfied that the grievor's error was induced by her own inattention and undue reliance on a planning sheet, rather than paying the necessary attention to the proper train sequence as reflected on the CTC Overview screen, with a cross reference

to the TGBO Protection List. In the result, the Arbitrator is satisfied that she made herself deserving of a substantial measure of discipline, given the safety sensitive nature of her duties.

Ms. Allison's record stood at fifty-seven demerits on the occasion of this infraction. She was assessed twenty demerits for a violation of CROR rule 152, a response which the Arbitrator is satisfied was within the appropriate range of discipline.

Unfortunately there are no mitigating factors to be applied in the case at hand. Over her ten years of service as rail traffic controller the grievor has amassed a great number of demerits for what appears to be repeated rules violations during the course of her service. In that regard she was previously disciplined on some eleven prior occasions. In the Arbitrator's view the record discloses that the Company has been fair in its application of progressive discipline to the grievor over the years. Additionally, it instituted a positive action plan with her in October of 2007 in an effort to bring home to her the importance of improving her performance and paying the requisite attention to her highly safety sensitive duties. As the culminating incident would indicate, those efforts were ultimately in vain.

In the Arbitrator's opinion this is not an appropriate case for a substitution of penalty. The grievance must therefore be dismissed.

November 24, 2009

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**