

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

**CASE NO. 3839**

Heard in Montreal, Thursday, 10 December 2009

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**EX PARTE**

**DISPUTE:**

Appeal the assessment of 40 demerits to Locomotive Engineer L. Grzesiak for circumstances surrounding “your involvement in train separation at Torlea while employed as locomotive engineer on train M30251 01 on July 3, 2009 as a result of violations of Locomotive Engineer Operating Manual Form 8690, Section G, Item G1:2, Section G, Item G1:6” and his subsequent discharge for accumulation of demerits in excess of sixty (60).

**UNION’S STATEMENT OF ISSUE:**

On July 3, 2009, Mr. Grzesiak was assigned to train M30251 01. While slowing down in preparation to take the siding at Torlea, Mr. Grzesiak’s train suffered a train separation. As a result of the train separation Mr. Grzesiak was required to attend an investigation. Subsequent to the investigation, Mr. Grzesiak was assessed 40 demerits and, as a result of the accumulation of demerits in excess of sixty, was discharged.

The Union contends that the discipline is unwarranted and excessive and that the Company did not take into account the mitigating circumstances surrounding the train separation. The Union contends that the hearing was not fair and impartial in violation of the provisions of article 86.

The Union requested that the Company reconsider the discipline assessed and the resulting discharge, and either expunge or reduce the discipline and compensate Mr. Grzesiak for all loss of wages and benefits.

The Company disagrees with the Union’s contentions and has denied the Union’s request.

**FOR THE UNION:**

**(SGD.) T. MARKEWICH**

VICE-GENERAL CHAIRMAN

There appeared on behalf of the Company:

P. Payne	– Manager, Labour Relations, Edmonton
D. Brodie	– Manager, Labour Relations, Edmonton
D. Gagné	– Sr. Manager, Labour Relations, Montreal
R. Maze	– Chief Dispatcher, Edmonton
G. Belanger	– Engine Service Officer, Montreal

And on behalf of the Union:

D. Ellisckson	– Counsel, Toronto
T. Markewich	– Sr. Vice-General Chairman, Edmonton
B. Willows	– General Chairman, Edmonton
P. Vickers	– General Chairman, Sarnia
R. Caldwell	– Sr. Vice-General Chairman, Belleville
R. Allen	– General Secretary/Treasurer, Saskatoon

## **AWARD OF THE ARBITRATOR**

The record discloses that the grievor was the locomotive engineer on train M302, ordered out of Edmonton on July 3, 2009. His consist was comprised of two locomotives, twenty-three empties, ten residue cars and eighty-six loads, the loads being located at the tail end of his train which totalled 9,413 feet in length. While operating east on the Wainwright Subdivision the grievor encountered a clear to stop signal at MP 189.6. The flashing arrow on the signal indicated that his train would be taking the siding at Torlea, some two and one-half miles distant. The grievor's train was then proceeding at forty-three miles per hour with the throttle in the maximum eight (8) position.

The first action taken by the grievor to slow his train commenced some 1.42 miles from the entrance to the siding at Torlea at Mile 188.62. It is not disputed that the grievor then engaged in "power braking", an expression used to describe the application of the automatic brake while the throttle position remains unreduced. The event recorder from the grievor's train indicates that he engaged in power braking by keeping his throttle in the number 8 position while applying the train's air brakes. The grievor's train went into emergency stop mode some forty-one seconds later, as a result of a broken knuckle on a loaded car near the tail-end, which caused the separation of his train.

Following a disciplinary investigation the Company concluded that the breaking apart of the grievor's train was caused by his aggressive train handling, and in particular use of power braking. Consequently it assessed forty demerits against his record which resulted in his termination for the accumulation of demerits. No argument with respect to the fairness and impartiality of the investigation was advanced before the Arbitrator.

The grievor's explanation is that he did engage in power braking as a device to stretch out his train in anticipation of slowing to enter the siding at Torlea. However, during the course of his investigation the grievor acknowledged that the train separation occurred forty-one seconds after he released the train brakes at a speed of twenty-one miles per hour. When the question was put as to whether that would have had an anchor effect because the train brakes on the tail end were still releasing, he responded in the affirmative.

The Company takes the position that for the grievor to have gone from throttle position eight to idle in a matter of one minute and seventeen seconds while taking ten pounds of air reduction constituted aggressive use of the locomotive's throttle and the train's braking system. In that regard the Company draws to the Arbitrator's attention the provisions of form 8960, section G8 concerning the use of the dynamic brake:

### **G8.1 Train Speed Control with DB only**

This is particularly important when only DB is used to control train speed and when the train has both empties and light loads on the head end and heavy loads on the rear-end. Under these conditions, a harsh bunching of slack or run-in combined with track curvature can cause very high lateral forces and/or cause derailments or damage to track structures.

### **G8.2 Reduce DB Prior to Speed Restriction**

When using DB, train speed must be reduced prior to reaching a speed restriction. This will prevent development of high compression forces on the head-end of the train when entering the restriction. When possible, speed should be reduced slightly below the maximum permissible speed prior to the speed restriction. DB retarding force can then be eased off while the train passes through the restricted area to allow an increase in speed.

In essence, the Company maintains that the grievor simply failed to engage in the necessary "forward planning" in anticipation of slowing to take the siding at Torlea, causing the separation of his train. Counsel for the Union questions the Company's conclusion. Firstly, he notes that there was no serious examination of the broken knuckle at the point of separation to determine whether some defect in the knuckle could have been a contributing factor. More substantially, he directs the Arbitrator's attention to the fact that train separations have not been uncommon with respect to train 302 and its sister movement, train 301. Counsel notes that in the past thirty months there have been sixteen occasions for the assessment of discipline in Western Canada for train separations. Fully ten of the sixteen train separations involved either train 302 or train 301, which are acknowledged to be extremely long trains. Counsel also stresses that the typical discipline assessed for those train separations was in the range of twenty demerits. While there is some variance in the measures of discipline assessed, no employee has previously received forty demerits for a train handling error leading to a separation, as occurred with the grievor.

I am satisfied that discipline was deserved. Upon a close review of the facts and submissions the Arbitrator is persuaded that there are mitigating factors which would justify an adjustment of penalty, albeit the penalty should remain relatively severe given the grievor's prior record which involves an earlier discharge for a rule 429 violation, which was reduced to a suspension by this Office (**CROA&DR 3702**). The record before the Arbitrator does demonstrate that the length of train 302 is such as to make the likelihood of a train separation more substantial, to the point that there were a great number of separations of trains 301 and 302 over a period of months prior to the incident here under review. While it is obviously not acceptable for the grievor to have engaged in aggressive train handling, the objective data would indicate that he was placed in a relatively precarious position by the Company's choice to operate extremely long trains over the territory in question. In the result, I am satisfied that a reduction of penalty is appropriate.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, with the removal of forty demerits from his record and the period between his termination and reinstatement to be recorded as a suspension for aggressive train handling in the operation of train M302 on July 3, 2009. He shall return to employment with his record to stand at twenty-five demerits.

December 16, 2009

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