

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

CASE NO. 3840

Heard in Montreal, Thursday 10 December 2009

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal the discipline assessed Les Grzesiak of Edmonton, Alberta for a failure to comply with radio procedures while working assignment M30141 17 on March 19, 2009.

UNION'S STATEMENT OF ISSUE:

On March 19, 2009, Mr. Grzesiak was employed as a locomotive engineer on train M30141 17 when he was involved in a radio conversation with Company Officer G. Huard that resulted in an investigation due to an alleged failure to adhere to the Company radio procedures. Subsequent to the investigation Mr. Grzesiak was assessed 15 demerits.

The Union contends that the Company failed to consider a number of mitigating factors, such as the Company officer violating the same radio regulations during the same radio conversation. The Union also contends that the discipline is excessive in relation to the alleged violation and in relation to the historic norm.

It is the Union's position that Mr. Grzesiak's discipline is unwarranted and should be expunged or, in the alternative, significantly reduced.

The Company disagrees with the Union.

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
L. Grzesiak	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator does confirm that the grievor failed to observe proper radio protocols in a conversation with Company Officer G. Huard on March 19, 2009. Specifically, as the grievor's train was sitting idle in the yard awaiting the arrival of his conductor, he received a radio call from his supervisor which led to a brief conversation. During the course of the exchanges Locomotive Engineer Grzesiak failed to complete his broadcasts by saying "over" as required by operating rules. Following a disciplinary investigation he was assessed fifteen demerits for that infraction.

The issue in the case at hand is the appropriate measure of discipline. His discipline record stood at twenty-five demerits at the time of this incident. There are, however, mitigating factors to be considered. Firstly, it is of some concern that the supervisor who engaged in the radio conversation with Locomotive Engineer Grzesiak also violated, on at least two occasions, the same radio protocol rule which the grievor is now disciplined for having not observed. While the supervisor's own failing obviously does not excuse the actions of the grievor, it does speak to a certain laxity in the application and enforcement of the rule, arguably to a degree that might have lulled an employee into believing that the rule was not to be rigorously applied. Given that this was the first time the grievor was disciplined for a radio related infraction, the Arbitrator is satisfied that the assessment of fifteen demerits, particularly for an employee of more than thirty years' service, is excessive. I am satisfied that in the circumstances a written reprimand would have sufficed to communicate to the grievor the importance of respecting radio procedures and protocols during the course of his tour of duty.

The grievance is therefore allowed, in part. The Arbitrator directs that a written reprimand be substituted for the fifteen demerits assessed against Locomotive Engineer Grzesiak.

December 16, 2009

(signed) MICHEL G. PICHER
ARBITRATOR