

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

CASE NO. 3845

Heard in Montreal Wednesday, 14 January 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Suspension of Conductor Steven Pass of Vancouver, BC, for "violation of CROR 115 while working the 2300k East lead assignment on March 30, 2009."

UNION'S STATEMENT OF ISSUE:

On March 30, 2009, Steven Pass was working as Assistant Yard Conductor on the 07:55 West lead assignment. While switching, the grievor's movement was involved in a side collision, causing minor equipment damage.

Following an investigation Mr. Pass, who had not previously been involved in any rule or safety violation, nor had he ever previously received discipline, was dismissed.

The Union contends that the discipline assessed was grossly disproportionate,, excessive and totally out of keeping with the tradition discipline. The Union requests that the discipline be greatly reduced and that the grievor be reinstated and made whole for all losses.

The Company disagrees.

FOR THE UNION:

(SGD.) R. A. HACKL

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

- D. Crossan – Manager, Labour Relations, Prince George
- K. Morris – Sr. Manager, Labour Relations, Edmonton

And on behalf of the Union:

- D. Ellickson – Counsel, Toronto
- B. Boechler – General Chairman, Edmonton
- R. A. Hackl – Vice-General Chairman, Edmonton
- R. Thompson – Vice-General Chairman, Edmonton
- R. Donegan – Local Chairman, Biggar

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond controversy, that the grievor was responsible for a side collision which occurred during the course of switching when Mr. Pass was working as Assistant Yard Conductor on the 0755 West lead assignment in Thornton Yard. The grievor is a relatively junior employee, having been hired in August of 2007. The record reflects that following a disciplinary investigation the Company initially discharged Mr. Pass. It subsequently made two adjustments to that penalty, ultimately bringing him back to work subject to a fifteen day suspension.

The sole issue in these proceedings is the measure of discipline. The Union submits that a two week suspension is excessive in the circumstances. Its counsel submits that prior awards of this Office would indicate that violations of CROR 115, which governs vigilance of operating employees in charge of switching operations, typically results in the assessment of fifteen demerits.

The Arbitrator does not dispute the Union's characterization of the general course of the jurisprudence. However, it is trite to say that each case must be determined on its own particular facts. In the case the Company has noted to the

Arbitrator's attention that at the time of the incident involving Mr. Pass there was a concerted campaign on the part of the Company to raise employee consciousness and diligence with respect to the application of CROR 115 in Thornton Yard operations, largely because of a series of previous incidents apparently involving violations of that rule. In a communication between the parties, dated July 2, 2009 the Company's Senior Vice-President for the Western Region expressed the Company's concern in the following terms:

CROR Rule 115 has been well communicated to all employees. In February 2008 Operating Bulletin No. BCS010 advised that due to three serious accidents and sever other incidents resulting form CROR 115 violations, effective immediately CRO Rule 115 paragraph (a) has been revised and now reads:

When equipment is pushed by an engine, a crew member must be on the leading car or on the ground, in a position to observe the track to be used and to give signals or instructions necessary to control the movement.

In addition, each month from February 2008 to April 30, 2009 this Operating Bulletin, identifying the revision to CRO Rule 115 violations where the employee states that he knows and understands Rule 115 and admits that he did not comply. ...

In the Arbitrator's view it is appropriate for the Company to take into account its efforts at dealing with a particular problem involving the repeated violation of a specific rule within its operations at a given location when assessing the appropriate level of discipline in certain cases. As prior decisions of this Office have noted, deterrence is a legitimate consideration, albeit not the only one, in assessing the measure of discipline.

While it is true that the grievor in the case at hand did not have any extensive prior discipline, it is also true that he is a relatively junior employee and that the error which he committed was clearly avoidable by the exercise of proper care. In the

Arbitrator's view it is not inappropriate for the Company to have considered the deterrent value of a fifteen day suspension in all of the circumstances disclosed.

For the foregoing reasons the grievance must be dismissed.

January 18, 2010

(signed) MICHEL G. PICHER
ARBITRATOR