

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

CASE NO. 3869

Heard in Montreal, Thursday, 11 February 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Appeal of the assessment of twenty-five (25) demerits and subsequent discharge of Rail Traffic Controller Ben Thomas for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On June 18, 2009, Rail Traffic Controller Ben Thomas attended an investigation for his alleged failure to perform an emergency radio test during his tour of duty on June 12, 2009. Following this investigation, the Company assessed Mr. Thomas' record with 25 demerits. Subsequently, Mr. Thomas was dismissed for accumulation of demerit marks.

The Union contends that the assessment of discipline is excessive and that there are mitigating circumstances surrounding this incident that need to be considered.

The Union requests the removal of the 25 demerits from Mr. Thomas' file and that he be reinstated without loss of seniority and be made whole for all lost wages and benefits.

The Company disagrees and denies the Union's request.

FOR THE UNION:
(SGD.) S. BROWNLEE
GENERAL CHAIRWOMAN

FOR THE COMPANY:
(SGD.) S. BLACKMORE
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

S. Blackmore	– Manager, Labour Relations, Edmonton
D. S. Fisher	– Director, Labour Relations, Montreal
G. Séguin	– General Superintendent, Regional Operations, Toronto
P. Lavoie	– Manager, RTC Operations, Toronto

And on behalf of the Union:

S. Brownlee	– General Chairwoman, Stony Plain
J. Ruddick	– Advisor, Burlington
M. Boucher	– Vice-General Chairman, Montreal

D. Shanahan – Local Chairman, Toronto
R. Leclerc – General Chairman, TCRC(LE), Grand-Mère
B. Thomas – Grievor

AWARD OF THE ARBITRATOR

The Company has assessed twenty-five demerits against the grievor for his admitted failure to perform an emergency radio test during his tour of duty on June 12, 2009. It is common ground that in accordance with RTC manual item 702 he is to perform such an emergency test call at least once per shift by contacting a running trade or engineering employee in the field and directing them to initiate an emergency test call. It appears that the grievor had in fact been disciplined by the assessment of fifteen demerits for the same failure on September 16, 2008.

The sole issue in the case at hand is the appropriate measure of discipline. The Arbitrator readily understands the Company's view, given that Mr. Thomas had been the subject of discipline a number of times in the past, although it appears that he did not incur demerits before 2008.

The Union stresses that the grievor was hired in 1998, and had been without demerits for some ten years. In its submission the grievor's work performance was negatively impacted by a marriage break-up which he experienced commencing in 2008, with the result of a series of errors in his work performance resulting in demerits on some four occasions during that year. The Union's representative notes that the situation was somewhat aggravated for the grievor by the fact that his spouse also worked in the Rail Traffic Controllers' office. The indication provided to the Arbitrator at

the hearing is that the grievor's life has since stabilized and that he is no longer under any comparable personal stress.

In the Arbitrator's view the grievor's personal circumstances do provide a mitigating factor to be taken into account. In the result, while I appreciate the Company's position, I am satisfied that a substitution of penalty is not inappropriate, albeit it should reflect a serious measure of discipline. The grievance is therefore allowed in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith without loss of seniority and without compensation. The grievor's failure to perform an emergency radio test on June 12, 2009 shall be dealt with by a suspension recorded from the time of the grievor's termination to the date of his reinstatement, with the twenty-five demerits to be removed from his record. It is vital that Mr. Thomas appreciate that this award is fashioned in the spirit of providing him a last chance to demonstrate that he can perform in the careful and consistent manner essential to his highly safety sensitive duties.

February 26, 2010

(signed) MICHEL G. PICHER
ARBITRATOR