

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

CASE NO. 3871

Heard in Montreal, Thursday, 11 February 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Appeal the assessment of forty-five (45) demerits and subsequent dismissal of Rail Traffic Controller Ian McKoy for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On July 2, 2009 Rail Traffic Controller Ian McKoy attended an investigation for his alleged violation of CROR Rule 564(e) and Rail Traffic Controller Manual Item 760 during his tour of duty on RB-1 on June 28, 2009, resulting in a collision between trains M30131-27 and Q10131-27. Following this investigation, the Company assessed Mr. McKoy's record with 45 demerits for "violation of CROR Rule 564(e) and RTC Manual Item 760." Subsequently, Mr. McKoy was dismissed for accumulation of demerit marks.

The Union contends the removal of the 45 demerits from Mr. McKoy's file and that there are mitigating circumstances surrounding this incident that need to be considered.

The Union requests the removal of the 45 demerits from Mr. McKoy's 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
I. McKoy	– Grievor

AWARD OF THE ARBITRATOR

The record reveals that on June 28, 2009 the grievor was responsible for the day shift rail traffic control of the Redditt Subdivision. By reason of signal problems, a train on the subdivision was operating in accordance with a Rule 564 authority. That movement, train M30131-27, was stopped at a location described as the East End of Jones, awaiting rectification of the signal problem by an S&C maintainer.

The evidence reflects that the grievor also issued a Rule 564(e) authority to train Q10131-27 allowing that train to pass the stop signal at Favel West. When he gave that train its authority, Mr. McKoy told the crew that there was no equipment in the block ahead of them, the territory for which he was giving them authority. In fact, train M301131-27 was stopped in the block, as described above.

At approximately 07:40 train Q1013 rounded a corner on the Redditt Subdivision while travelling at 40 kph when its crew saw the tail end of train M301. They immediately applied their emergency brakes, but were not able to stop in time, resulting in a collision with the tail end of train M301, estimated to be at a speed of twenty-five miles per hour at Mile 105 of the Redditt Subdivision. The collision derailed the tail end six cars of the stationary train and the three locomotive units of train Q101. Serious injuries resulted to the locomotive engineer and conductor of train Q101, who, it

appears, remain off work to this date. Additionally, the cost of the derailment is estimated at approximately \$1,400,000.00.

The Company assessed forty-five demerits against the grievor for his violation of CROR 564(e) and RTC Manual Item 760 for his failure to have advised the crew of train Q101 that there was in fact “equipment” in the form of a train stopped in the block which they had been given authority to travel through.

In an explanation which the Arbitrator views as raising concern, during the course of its investigation Mr. McKoy stated his personal view that a train is not “equipment” within the meaning of CROR 564(e). In his view, equipment would refer to engineering or track maintenance equipment or high-rail vehicles and the like, but not to a train or train consist.

The Arbitrator has substantial difficulty with the grievor’s explanation. He knew, or reasonably should have know, that he was authorizing train Q101 to proceed at relatively high speed through a block which, unbeknownst to the crew of Q101, contained a stationary train. Because he did not consider that train to constitute “equipment” he apparently chose not to advise of its presence, a decision which obviously resulted in a serious collision and derailment, and serious physical injuries causing the long term and indefinite absence of at least two employees. Far from considering the grievor’s narrow view of the word “equipment” for the purposes of the rule which he violated as being a mitigating factor, I consider to be an obviously

aggravating factor. It is difficult to imagine how a person with the responsibilities of a Rail Traffic Controller could be indifferent to a situation which was so obviously hazardous, making no effort to advise the crew of train Q101 of the presence of train M301, based on his personal view that the word "equipment" should exclude a train. That attitude raises fundamental questions as to the grievor's grasp of the purpose of the rule.

The record before the Arbitrator indicates that Mr. McKoy has registered an unenviable disciplinary history since 1992. He incurred demerits on seven separate occasions and received suspensions or deferred suspensions in 1994, 2002, 2005, 2006 and 2007. I consider his prior record also to be an aggravating factor and can see no compelling mitigating factors which would suggest that this is an appropriate case for a substitution of penalty.

For the foregoing reasons, the grievance must be dismissed.

February 26, 2010

(signed) MICHEL G. PICHER
ARBITRATOR