

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

**CASE NO. 3878**

Heard in Calgary, Tuesday, 9 March 2010

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Assessment of twenty (20) demerits to Conductor P. Mousir of Calgary for failure to follow journal set out instructions at Mirror ... while working as conductor on Q11451-01. This resulted in delay to Q11451-03 departing Mirror and subsequent dismissal from the Company for accumulation of demerits in excess of sixty (60).

**COMPANY'S STATEMENT OF ISSUE:**

On October 4, 2009, the grievor was the conductor on Q11451-03, travelling from Calgary to Mirror. Upon arrival at Mirror, the grievor set out 37 cars from the head end of his train to track OR16. The head end block of 5 cars was to remain with the train and to be set out at a customer location.

Through the investigative process the Company determined that the grievor's action delayed Q11451-03 in its departure from Mirror. Mr. Mousir was assessed twenty (20) demerits for his responsibility in this matter and was subsequently dismissed for the accumulation of demerits in excess of sixty (60).

The Union contends that the issuance of discipline is unfair, was not needed and should be expunged and the grievor made whole,

The Company disagrees with the Union's contentions.

**FOR THE COMPANY:**

**(SGD.) P. PAYNE**

**FOR: DIRECTOR, HUMAN RESOURCES**

There appeared on behalf of the Company:

P. Payne	– Manager, Labour Relations, Edmonton
K. Morris	– Sr. Manager, Labour Relations, Edmonton
D. Crossan	– Manager, Labour Relations, Prince George
C. Mitchell	– Trainmaster, Calgary
C. Tytgat	– Trainmaster, Calgary

There appeared on behalf of the Union:

M. A. Church	– Counsel, Toronto
B. Boechler	– General Chairman, Edmonton
R. A. Hackl	– Vice-General Chairman, Edmonton
G. Mensaghi	– Local Chairman, Calgary
H. Richardson	– Former Local Chairman, Calgary
P. Mousir	– Grievor

### **AWARD OF THE ARBITRATOR**

It is admitted that the grievor was responsible, in part, for the delay in the departure of train Q11451-03 from Mirror on October 4, 2009. The evidence confirms that the grievor was aware that the head end block of five cars on his train was to remain with it. Having forgotten that requirement, he incorrectly switched out those cars into track OR-16 as part of a total cut of thirty-seven cars. Upon going off duty he realized his error and communicated with the conductor of the on-going movement, requiring that crew to delay its departure for the time needed to return to track OR-16 and collect the five cars in question for furtherance onward.

The sole issue in the case at hand is the appropriate measure of discipline. The grievor is sixty-years of age and has some twenty-three years of service with the Company. While his disciplinary record is not enviable, in mitigation it does not appear disputed that he has suffered a degree of personal stress, occasioned by his witnessing the fatality of a fellow worker at Calgary in 2005. It does not appear disputed that when his train was enroute to Mirror he and his crew were informed of a disturbing level crossing fatality at Edmonton and the apparent presence of a child trapped in the resulting wreckage, something which the grievor states troubled him profoundly and he believes distracted him from paying proper attention to his work on the arrival of his train into Mirror. In the circumstances the Arbitrator is satisfied that this is an appropriate case for reinstatement, albeit without compensation.

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 for any wages and benefits lost. The time between his termination and

reinstatement shall be registered as a suspension for unsatisfactory work performance and delay to train Q11451-03 on October 4, 2009.

March 15, 2010

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