

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

**CASE NO. 3882**

Heard in Calgary, Wednesday, 10 March 2010

concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of discharge of Conductor Rhonda Millar.

**JOINT STATEMENT OF ISSUE:**

On April 7, 2008, Conductor Millar crew's train was involved in a tail-end collision with preceding train 292-05 at Centennial, Weyburn subdivision. Following an investigation into this incident, Conductor Millar's employment was terminated on May 7, 2008 as described on form 104, "for failure to ensure your train was operated in a safe and controlled manner, as evidenced by a tail-end collision with preceding train 292-05 at Centennial, Weyburn subdivision, on April 7, 2008; a violation of CROR Rule 303 (b) and (c), CROR Rule 303.1, CROR Rule 90 and SSI, CROR Rule 106 (a), CROR Rule 106 (d), CROR General Notice, and CROR General Rule A (i), (iii), (iv) and (vi)."

It is the Union's position that Ms. Millar's dismissal is unwarranted and excessive in all of the circumstances.

The Union requests that Conductor Millar be reinstated without loss of seniority and benefits, and that she be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and denies the Union's request.

**FOR THE UNION:**

**(SGD.) D. OLSON**  
GENERAL CHAIRMAN

**FOR THE COMPANY:**

**(SGD.) D. McFARLANE**  
ASSISTANT VICE-PRESIDENT – OPERATIONS

There appeared on behalf of the Company:

B. Deacon – Labour Relations Officer, Calgary  
R. Wilson – Assistant Vice-President, Industrial Relations, Calgary  
J. Bairaktaris – Director, Labour Relations, Calgary  
A. A. Garcia – Manager, Labour Relations, Calgary  
D. Corrigan – Labour Relations Officer, Calgary

D. Purdon – Manager, Operations, Moose Jaw

And on behalf of the Union:

M. A. Church – Counsel, Toronto  
D. Olson – General Chairman, Calgary  
D. Fulton – Vice-General Chairman,  
G. Hiscock – Local Chairman, Moose Jaw  
B. Wiszniak – Local Chairman, Regina  
D. Able – General Chairman (LE), Calgary  
G. Edwards – Sr. Vice-General Chairman (LE), Revelstoke  
R. Purtill – Local Chairman (LE), Moose Jaw  
R. Millar – Grievor

### **AWARD OF THE ARBITRATOR**

Based on the facts, the Arbitrator is compelled to conclude that the grievor was involved in rules violations in the course of the operation of train 498-07, southbound on the Weyburn Subdivision on April 7, 2008. In the result, a rear-end collision occurred, causing the derailment of cars on three separate trains at Centennial. The record discloses that as the grievor's train approached Centennial, under the control of Locomotive Engineer Cranston, the grievor was preoccupied with the completion of certain paperwork, as a result of which she did not pay close attention to her movement's approach to the north siding switch at Centennial, and the execution of a close-up manoeuvre behind train 292-05 which was stopped just south of that location. She did violate the rules cited in the joint statement of issue.

There can be no doubt but that the grievor was deserving of discipline for the rules infractions cited in the joint statement of issue. The sole issue is the appropriate measure of discipline in the circumstances.

In the Arbitrator's view there are mitigating factors to be considered. Perhaps most significant among them is what I view as the relative responsibility of Locomotive Engineer Cranston for the rear end collision which unfortunately resulted at Centennial on that day. Locomotive Engineer Cranston, for reasons which only he may understand, handled his train in such a way as to bring it to a stop at the south siding switch, a point beyond stationary train 292-05. He did so notwithstanding repeated information, some of which was conveyed by the grievor, that the train in question was in fact standing still and that he was to close-up behind a stationary train. Indeed, the record would suggest that it was only the grievor's alerting the locomotive engineer to the reality of the situation when she looked up from her paperwork that he finally realized that the train they were approaching was in fact stopped.

While these observations do not excuse the grievor from the rules violations which she did commit, a close examination of the objective circumstances confirms that but for the gross and inexplicable error in judgement committed by Locomotive Engineer Cranston in the handling and braking of his train, the unfortunate incident at Centennial would have been avoided.

A further mitigating factor of importance is the grievor's prior service. Employed by the Company since May of 1991, prior to the incident at Centennial she had only one prior rules infraction on her record. In 1999 she incurred demerits in relation to damage to equipment as a result of a failure to properly use hand brakes in the Moose Jaw yard. Significantly, apart from that incident her entire service with the Company is

without any disciplinary blemish. On the whole, I am satisfied that it is appropriate to reinstate the grievor to her employment, albeit without compensation.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into her employment forthwith without loss of seniority and without compensation for any wages or benefits lost.

March 15, 2010

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