

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

**CASE NO. 3883**

Heard in Calgary, Wednesday, 10 March 2010

concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of 30 demerits and subsequent discharge of Yard Helper Dale Braumberger.

**JOINT STATEMENT OF ISSUE:**

On November 7, 2008, Yard Helper Braumberger's employment was terminated by the Company for accumulation of demerits following the Company's assessment of 30 demerits as described on form 104 for "allowing standing equipment to be left unattended with the angle cocks closed and air in the train line, for failing to conduct a proper job briefing and to retain a copy of your pre-job briefing form, and for failing to promptly report this violation to the proper authority, during your tour of duty on September 28, 2008 while working as Yard Helper on the Regina KR41 Yard Assignment. This was a cardinal safety rule violation and a violation of G01-2 Section 14, Item 2.0; CROR General Rule A (I), (iii) and (vi); Saskatchewan Summary Bulletin dated 0001 August 1, 2008 until 2359 October 31, 2008, page 16; CROR General Notice; and CROR Rule 106."

The Union contends that the investigation was not conducted in a fair and impartial manner per the requirements of the collective agreement. For this reason, the Union contends that the discipline is null and void and ought to be removed in its entirety and Yard Helper Braumberger must be made whole. Further, the Union contends that there are no grounds for discipline in the circumstances. In the alternative, it is the Union's position that the level of discipline (30 demerits and subsequent dismissal) is unjustified, discriminatory and unwarranted in all of the circumstances. Finally, the Union submits that the Company chose not to recognize Yard Helper Braumberger as a candidate for deferred discipline, contrary to the collective agreement.

The Union requests that Yard Helper Braumberger be reinstated without loss of seniority and benefits, and that he 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.) A. A. GARCIA**  
**FOR: ASSISTANT VICE-PRESIDENT – OPERATIONS**

There appeared on behalf of the Company:

D. Corrigan	– 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
M. Moran	– Labour Relations Officer, Calgary
B. Deacon	– Labour Relations Officer, Calgary
D. Purdon	– Manager, Operations, Moose Jaw
K. Wachs	– Manager, Operations Practices, Calgary

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. Braumberger	– Grievor

**AWARD OF THE ARBITRATOR**

The record discloses that during the grievor's tour of duty on September 28, 2008, while he was assigned as a yard helper on the Regina KR41 Yard Assignment, working with Yard Foreman Mathew Degerness-Craswell and Locomotive Engineer John Gasper, an incident occurred which involved a cut of cars being shoved into track C-1. The cars were coupled to existing traffic in the track and thereafter left in a state where the air was not drained from the brake system, a condition known as "bottling the air". In effect, because the angle cocks at either end of the movement were not left in an open position, the emergency braking system on the cars did not engage, thereby creating a hazard which could have resulted in a roll-out of the equipment. It does not appear disputed that no handbrakes were applied as an alternative means of securing the cars. In the result a plainly hazardous condition was created.

The evidence discloses that after working elsewhere in the east end of the yard Yard Helper Braumberger returned to the east end of the cars in track C-1. As the work plan was to then couple the locomotive to that end of the consist, he opened the angle cock at the east end to discover that the air had in fact not been released from the brake system. The evidence of Mr. Braumberger, which the Arbitrator accepts, is that the yard foreman working with him, Mr. Degerness-Craswell, was earlier told by Mr. Braumberger to open the angle cock at the west end of the consist immediately after it had been shoved into track C-1. For reasons best known to himself, Yard Foreman Degerness-Craswell failed to do what Mr. Braumberger told him to do. While it may seem unusual for a yard helper to be giving directions to a yard foreman, it is common ground that Mr. Degerness-Craswell was a relatively new employee with limited experience and prior discipline who, it appears, needed the guidance of the grievor, a far more experienced employee, who had previously worked as a locomotive engineer and, as a result of a prior incident, had been restricted to yard service.

The evidence reveals that upon discovering that the cars in track C-1 had been left with the air bottled, the grievor, having bled the air, did not immediately make successful contact with any supervisor to advise of the hazardous condition which had been created, contrary to his obligation. While he relates that he attempted to make several phone calls, without success, it is not disputed that it is only after having gone off duty and discussed the situation with his father that he finally did reach a supervisor to report what had happened. Nor does it appear disputed that he could have immediately informed the Train Yard Coordinator. When asked to explain that omission

he stated that he was not in a state of mind to discuss the incident at the time. That is because the grievor's disciplinary record then stood at fifty-five demerits and he was obviously in great fear of the consequences which might be visited upon him.

Following the disciplinary investigation the Company assessed thirty demerits against each member of the crew. That discipline resulted in the grievor's dismissal.

As a preliminary matter the Union submits that the grievor was denied a fair and impartial investigation. The Arbitrator cannot agree. The grounds of the Union's objection are that what its Counsel qualifies as leading questions put to the grievor during his investigation and that he was subjected to two separate interviews rather than simply one. Having reviewed the record the Arbitrator can find nothing objectionable in the procedures followed by the Company which were, I am satisfied, fairly directed towards eliciting the truth of the incident, something made relatively difficult by the less than clear account of the facts provided by Yard Foreman Degerness-Craswell. The resumption of the investigation was understandable, and the putting of leading questions does not violate the rules, to the extent that they tend to be educational. The Arbitrator rejects the Union's preliminary objection.

The real issue in the case at hand is whether there was a violation of the rules by the grievor and if so what is the appropriate measure of discipline. Having close regard to the facts the Arbitrator is persuaded that there are mitigating factors to consider in the case at hand. Firstly, it appears clear from the evidence before me that the crew

had an understanding that Mr. Degerness-Craswell would open the angle cock at the west end of the cut of cars which they placed into track C-1. Whether it was out of inadvertence or in an attempt to cut corners, it is clear that the yard foreman did not do what was expected of him. Working at the east end of the movement, Mr. Braumberger had no reason to know that his workmate had departed from the plan. While it is true that the difficulty might have been avoided had Mr. Braumberger verified by radio with his yard foreman that the angle cock had been opened at the west end of the cars, the Arbitrator has been directed to no precise rule which would have mandated such affirmative communication. The gravamen of the grievor's action appears to be restricted to the fact that having discovered the bottling of the air, and having opened the angle cock at the east end of the movement, he failed to report the matter for a period of some seventy minutes. There can be little doubt that he did so out of a certain degree of shock and fear for his own job security.

Several positive facts, however, do emerge. Firstly, the grievor did, as stressed by counsel for the Union, ultimately disclose what had happened to his supervisor. Arguably he could have concealed the incident and it might never have been discovered. Additionally, Yard Helper Braumberger comes to this arbitration as a long service employee, with some twenty-nine years of service. While the Arbitrator is satisfied that the incident was, as the Company argues, extremely serious, I am satisfied that the substitution of a lengthy suspension in the circumstances is sufficient to have the desired rehabilitative impact upon the grievor. That is particularly so given

Mr. Braumberger's obvious candour with respect to the facts of the incident and the remorse that he has displayed.

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 period between his termination and his reinstatement shall be recorded as a suspension for the rules violations originally cited.

March 15, 2010

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