

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

CASE NO. 3884

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 Service Helper Chris Hetherington.

JOINT STATEMENT OF ISSUE:

On April 12, 2008, in the process of switching between the C-yard lead and Track MF 10, Moose Jaw yard, a cut of two cars sideswiped Yard Service Helper Hetherington crew's locomotive. Following an investigation into this incident, Yard Service Helper Hetherington was issued a Form 104 by the company; "For failing to properly secure unattended equipment resulting in its unintended movement and sideswipe collision between on track equipment, a Cardinal Rule Violation, which occurred during your tour of duty on April 12, 2008, while employed as Yard Service Helper on the 1500 Moose Jaw Yard Pitch & Catch Assignment; a violation of GOI Section 14 Item 1.0, 1.1, and 1.2, CROR 112, CROR 106, CROR General Notice, CROR General Rules A (i), (iii) and (vi), and Saskatchewan Service Area Monthly Operating Bulletin (0-BULLSSA-060JULY23/07) Pages 5 and 18." As a result Yard Service Helper Hetherington was assessed 30 demerits and his employment was terminated May 2, 2008.

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.

The Union requests that Yard Service Helper Hetherington 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:

M. Moran	– 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
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
C. Hetherington	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms, without controversy, that the grievor violated fundamental operating rules during the process of switching in the Moose Jaw yard on April 12, 2008. Most seriously, he simply followed the direction of his yard foreman, with whom he was engaged in beltpack switching (RCLS). The record discloses that Yard Service Employee Wayne Anderson, with whom the grievor was working as Yard Service Helper, directed the grievor to ride on the point of their movement. However, contrary to the clear requirement of the Saskatchewan Service Area Monthly Operating Bulletin of April 1, 2008, and in particular Item C of the General Instructions, the grievor did not maintain control of the RCLS equipment while riding on the point.

During the course of their tour of duty Mr. Anderson and Mr. Hetherington shoved two cars into track MF-10 to form a joint with other standing equipment.

However they failed to stretch the joint to ensure that it was securely made and that the cars, being on sloping track, would have the benefit of handbrake security. When they pulled their power out of track MF-10 the two cars rolled back out of that track, causing a collision with the side of their yard locomotive.

The ensuing disciplinary investigation reveals not only that the grievor was not in control of the RCLS equipment, as required by the rules, but that he made no effort to verify that Yard Service Employee Anderson had in fact ensured that the cars which they moved into track MF-10 did in fact make a secure joint. In the result, the conclusion is inescapable that due, in part, to the grievor's involvement in the violation of the rules cited in the statement of issue, an avoidable collision occurred. In light of that fact, the grievor was assessed thirty demerits while Yard Service Employee Anderson was assessed forty demerits.

The Arbitrator has difficulty seeing on what basis the discipline against the grievor can be removed or reduced. It is clear that as a yard service helper Mr. Hetherington was under an independent obligation to respect all operating rules. Contrary instructions from his workmate do not excuse his failure in that regard. Nor is the Arbitrator persuaded that other cases of yard incidents, raised by the Union, for example where lesser measures of discipline were assessed against yard crews not operating RCLS equipment, amount to compelling evidence of discriminatory treatment. Most significantly, the grievor, whose active service totalled some fifteen months at the time of the incident, already had four prior instances of discipline assessed against him,

totalling forty-five demerits. That included fifteen demerits for failing to properly line a switch for his movement, resulting in a run-through of a switch at Sutherland Yard on January 30, 2007.

It goes without saying that an employee of extremely limited service with an obviously negative disciplinary record cannot advance his or her working history as a mitigating factor in a case such as this. On the contrary, when the record itself is such an aggravating factor, the Arbitrator has little alternative but to agree with the Company's assessment that the grievor's cardinal rule infraction involving a collision is deserving of serious discipline, in the range of thirty to forty demerits. It is therefore not appropriate to interfere with the Company's judgement, which is that the grievor has not demonstrated the capacity to be a safe and productive employee.

For the foregoing reasons the grievance must be dismissed.

March 15, 2010

(signed) MICHEL G. PICHER
ARBITRATOR