

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

CASE NO. 3893

Heard in Montreal Thursday, 15 April 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL
WORKERS UNION OF CANADA (CAW-CANADA)**

DISPUTE:

The imposition of 15 demerits to the file of P. Auclair.

JOINT STATEMENT OF ISSUE:

Fifteen demerits were assessed to the discipline file of Mr. P. Auclair for "lack of productivity on Thursday, 20 August 2009".

The Union contends that the discipline is unjustified.

The Company disagrees.

**FOR THE UNION:
(SGD.) D. ST-LOUIS
NATIONAL REPRESENTATIVE**

**FOR THE COMPANY:
(SGD.) S. GROU
MANAGER LABOUR RELATIONS**

There appeared on behalf of the Company:

S. Grou	– Manager, Labour Relations, Montreal
A. deMontigny	– Sr. Manager, Labour Relations, Montreal
D. N. Dobie	– Sr. Chief RTC, Montreal
J. Chalifoux	– Garage Supervisor, Montreal

And on behalf of the Union:

R. Fitzgerald	– National Representative, Toronto
J. Savard	– Regional Representative, Montreal
S. Auger	– Regional Representative, Montreal
A. St-Pierre	– Vice-President, Intermodal, Montreal
M. Hrapkowicz	– Local President, Montreal
P. Auclair	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that on August 20, 2009 Mr. Auclair was observed driving a shunter tractor at low speed both within the yard and on an adjacent road, enroute to the garage. It appears that he averaged approximately 10 kph in zones where the permissible speed was 30 kph and 50 kph, over an estimated distance of some 1-1/2 miles. Before he reached his destination the grievor was instructed by Terminal Coordinator Michel Vezina to proceed to the employees' canteen where, after a brief delay, he was given written notice of an investigation into what the Company alleged was his lack of productivity.

The Arbitrator fully accepts the grievor's account of what occurred. He explains that he was instructed by his supervisor to verify the functions on an overhauled dashboard on the vehicle he was driving. It appears that the dashboard had been repaired in the days prior, and that none of the controls on the dashboard had any written indication of their function. In other words, a person driving the vehicle could not determine which button or handle controlled the heater, the air conditioner, the ventilation system or other similar functions.

According to Mr. Auclair, it was his plan to engrave the functions next to the various buttons once he reached the garage. He explains that as he drove at slow speed he tested each button or lever for its function, and having discovered its function he wrote in felt pen on the face of the dashboard what that function was. He then intended to remove the felt pen writing and substitute engraving once he reached the

garage. In his view it was more efficient to do it that way, and to avoid the necessity for running the tractor inside the garage to discover the various functions, a process which would have required setting up an exhaust evacuation system.

In the result the grievor was assessed fifteen demerits for his lack of productivity. The Arbitrator has some difficulty with the severity of that assessment. While the Company understandably takes the view that the grievor should have simply driven the vehicle to the garage at normal road speeds, doing the identification of the various knobs and levers only once he reached the garage, where he could also then engrave the controls identified, there is no evidence before the Arbitrator that he was specifically told how or where he must perform the task of identifying the various functions. While it is doubtful that the method chosen by Mr. Auclair is necessarily the most efficient, in the Arbitrator's view that would go to a question of judgement more than to a deliberate decision to reduce or limit productivity.

In the end, I am satisfied that the grievor did make himself liable, in the manner he chose to perform the work, to some measure of discipline for inefficiency. I am not persuaded, however, that the assessment of fifteen demerits was appropriate. In my view a written reprimand would have been sufficient to indicate to Mr. Auclair that he should not drive the vehicles under his care at such slow speeds, whether in the yard or on an adjacent public road.

In the result, the grievance is allowed, in part. The Arbitrator directs that the fifteen demerits assessed against Mr. Auclair be removed from his record, and that a written reprimand be substituted for his slow method of production, as recorded on August 20, 2009.

April 19, 2010

(signed) MICHEL G. PICHER
ARBITRATOR