

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

CASE NO. 3924

Heard in Montreal, Tuesday, 11 January 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the discipline of 15 demerit marks assessed to Locomotive Engineer E.R. Buchan of Winnipeg for his violation of C.R.O.R. Rule 110 at Bloom on February 18, 2010, and his resulting discharge for accumulation of demerit marks in excess of sixty, effective March 12, 2010.

JOINT STATEMENT OF ISSUE:

On February 18, 2010, Mr. Buchan was assigned as the Locomotive Engineer on Train 112, from Rivers to Winnipeg. While in the siding at Bloom, meeting Train 314, Locomotive Engineer Buchan and his Conductor failed to perform an inspection of Train 314 as it departed, and were observed and counselled by Trainmaster Rutherford for this violation of C.R.O.R. Rule 110.

The Company conducted an investigation of the incident and determined that Mr. Buchan had violated CROR Rule 110, and subsequently assessed him the discipline of 15 demerit marks, resulting in his discharge for accumulation of demerit marks in excess of sixty.

The Union contends that the discipline and resulting discharge were extremely excessive and failed to take into account all of the mitigating factors.

The Union requested the Company reconsider the discipline assessed, and that Mr. Buchan should be reinstated and made whole for all lost wages and benefits.

The Company disagrees with the with the Union's contentions.

FOR THE UNION:

FOR THE COMPANY:

(SGD.) T. MARKEWICH
FOR: GENERAL CHAIRMAN

(SGD.) D. BRODIE
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Brodie	– Manager, Labour Relations, Edmonton
D. VanCauwenbergh	– Director, Labour Relations, Toronto
J. Orr	– Assistant Vice-President, BC South
S. Bahl	– Assistant Superintendent, Transportation, Winnipeg
M. Rutherford	– Trainmaster, Winnipeg

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Toronto
B. Willows	– General Chairman, Edmonton
T. Markewich	– Sr. Vice-General Chairman, Edmonton
B. R. Boechler	– General Chairman, Edmonton
R. A. Hackl	– Vice-General Chairman, Edmonton
E. Buchan	– Grievor

AWARD OF THE ARBITRATOR

It is not disputed that the grievor failed to perform a pull-by inspection of another train while his own train was in a siding, in violation of CROR rule 110. Indeed he deliberately did so notwithstanding his conductor's statement that the two of them should detrain to perform a proper pull-by inspection on both sides of the other train. Rather, Mr. Buchan decided that it was more important to move his train further down the siding, in anticipation of departing as soon as possible after the other train had departed in the same direction.

The only issue in these proceedings is the appropriate measure of discipline. Following a disciplinary investigation the Company assessed fifteen demerits against the grievor, which resulted in an overall accumulation of sixty-five demerits on his record, which caused his dismissal. I am satisfied that the general measure of discipline assessed by the Company was not inappropriate. The real issue, however, is whether the Arbitrator should exercise his discretion under the **Canada Labour Code** to reduce

the penalty in all of the circumstances. There are mitigating factors that suggest that that is not an inappropriate alternative.

The grievor has some twenty-two years of service to the Company. Significantly, his record of employment is almost devoid of operating rules infractions. With the exception of one incident in 1999, he had no rules violations on his record for a period of twenty-one years. In 2009 he suffered a suspension for a violation of CROR rule 112(b) (**CROA&DR 3969**). The instant violation of CROR rule 110 therefore represents only the third rules infraction by the grievor in some twenty-two years of service. In the Arbitrator's view that record does represent an element of mitigation which should be taken into account. While I agree with the Company that a serious degree of discipline was deserved, given the grievor's record, I am satisfied that this is an appropriate case for a substitution of penalty, albeit a serious one.

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 recorded as a suspension for the violation of CROR Rule 110 on February 18, 2010. Mr. Buchan's disciplinary record shall be returned to the level of fifty demerits.

January 17, 2011

(signed) MICHEL G. PICHER
ARBITRATOR