

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

CASE NO. 3930

Heard in Montreal Tuesday, 14 September 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

The assessment of twenty (20) demerits to Conductor Roger Serediak of Edmonton, Alberta, for “riding on the end platform of moving car while not engaged in applying handbrakes” and subsequent dismissal from the Company for accumulation of demerits.

COMPANY’S STATEMENT OF ISSUE:

On June 2, 2009, the grievor was working as the Conductor on the YYXS02 yard assignment. During this assignment Conductor Serediak was observed crossing between ballast cars on the walkway while the movement was in motion.

The grievor was required to provide an employee statement with respect to an alleged violation of GOI Section 8, 12.4, riding equipment and was subsequently assessed twenty (20) demerits. These twenty demerits, coupled with the fifty-five (55) previously on the grievor’s discipline record, resulted in discharge for accumulation of demerits in excess of sixty (60).

The Union contends that the Company failed to properly train the grievor, that he be returned to work, allowed a period of retraining and that the grievor be made whole.

The Company disagrees with the Union’s contentions.

FOR THE COMPANY:

(SGD.) P. PAYNE

FOR: DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

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| P. Payne | – Manager, Labour Relations, Edmonton |
| K. Morris | – Sr. Manager, Labour Relations, Edmonton |
| D. Crossan | – Manager, Labour Relations, Prince George |
| J. Orr | – Assistant Vice-President, BC South, |

And on behalf of the Union:

M. A. Church	– Counsel, Toronto
B. R. Boechler	– General Chairman, Edmonton
R. A. Hackl	– Vice-General Chairman, Saskatoon
B. Willows	– General Chairman, Edmonton
J. Robbins	– General Chairman, Sarnia
P. Vickers	– General Chairman, Sarnia

AWARD OF THE ARBITRATOR

The grievor is a relatively junior employee with some two years of service at the time of the incident which led to his discharge. On June 2, 2009 he was assigned as conductor on the 09:00 yard assignment YYXS02 in Walker Yard. He was then working with a partner conducting a yard movement through the use of a belt pack which the grievor was operating.

During the course of his assignment Mr. Serediak found himself on the side ladder of a ballast car which was coupled to a similar ballast car as part of the consist which he was moving with his yard helper. It appears that during the course of the movement the grievor lost radio contact with his yard helper, whom he believed was riding on the point. According to his explanation, which the Arbitrator accepts, he then attempted to change his position to give himself a better visual perspective of the overall movement and the possibility of locating his helper. To do so he climbed the ladder on the side of the ballast car on which he was riding and stepped onto a small platform intended for standing while controlling the handbrake on the end of the car. It appears that he then stepped from that platform onto the similar platform at the end of the

adjacent car, from where he moved onto the side ladder of that car, on the opposite side of the movement from where he had originated.

The Company maintains that the grievor's actions violated GOI Section 8, 12.4.

That rule reads as follows:

12.4 RIDING EQUIPMENT

PURPOSE: To ensure employee safety while riding various types of equipment.

PROCEDURE: When riding equipment, employees **MUST ALWAYS:**

unless it is the trailing car in the movement, ride the side ladder on the leading end of equipment in the direction of travel;

continuously maintain a firm grip on handholds provided:

be aware of and protect themselves against sudden movement or slack action;

look in the direction of travel, continuously monitoring safety of movement;

be aware of and react to restricted clearances;

ride the side which provides the best escape route (clear of adjacent structures and equipment if possible).

Employees must observe the following restrictions:
(the list below is not exhaustive, it contains some examples

DO NOT RIDE on the roof of equipment.

DO NOT RIDE the end ladder or end crossover platform, unless required to apply a handbrake (application of handbrake must not be made while equipment is being pulled or pushed by an engine).

DO NOT RIDE any higher up the side ladder than required.

DO NOT RIDE on the service ladder located in the middle of a tank car.

As is evident from the statement of issue, the Company disciplined the grievor for riding on the end platform of a moving car. The Union suggests that the grievor was

merely crossing over from one location to another on his consist. With respect, the Arbitrator cannot agree. It would appear that during what occurred the grievor was at all times riding the movement which he controlled by his backpack equipment. The obvious safety concern implicit in rule 12.4 is that employees ride on the side of moving equipment, and never between pieces of moving equipment where the peril of falling can have fatal consequences. In the result, with respect to the facts, the Arbitrator is satisfied that the grievor did violate GOI Section 8, 12.4, as alleged.

The issue then becomes the appropriate measure of discipline. In the Arbitrator's view concern arises with respect to the flurry of disciplinary activity visited against the grievor over a thirteen day period. The record discloses that Mr. Serediak was assessed twenty demerits for improper detraining on May 19, 2009. He was then assessed fifteen demerits for crossing tracks between two cuts of cars with insufficient distance between them on May 26th. Only days later, on June 2, 2009, he was then assessed twenty demerits for the infraction which is the subject of this award. As he previously had twenty demerits for arising from a side collision in early 2009 Mr. Serediak placed himself in a dismissible position by reason of accumulation of demerits.

The Arbitrator shares the Company's perspective of concern for what appear to be repeated safety infractions on the part of the grievor. However, consideration must be given as to whether the cumulative impact of these measures of discipline over such a short period is consistent with the application of rehabilitative principles which are meant to underlie the Brown system of industrial discipline. While I recognize that the

grievor cannot invoke lengthy service as a mitigating factor, as a relatively junior employee he should nevertheless be entitled to the opportunity to benefit from the assessment of discipline and the corrective value it can have.

In the result I am satisfied that this is an appropriate case for a substitution of penalty, albeit a severe one. The Arbitrator determines that the grievance should be allowed, in part. The grievor shall be reinstated into his employment forthwith, with the twenty demerits assessed against him for the incident of June 2, 2009 to be removed from his record, and the period from his termination to his reinstatement substituted as a suspension for that incident. His reinstatement shall be without loss of seniority and without compensation for wages and benefits lost.

September 20, 2010

(original signed by) MICHEL G. PICHER
ARBITRATOR