

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

CASE NO. 3934

Heard in Wednesday, 15 September 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED STEEL WORKERS (LOCAL 2004)

DISPUTE:

The discharge of John Welch.

JOINT STATEMENT OF ISSUE:

Mr. Welch was assessed 40 demerits on January 26, 2010 for the following reason: "Derailment of Brandt truck, failure to operate at recommended air bag pressures and failure to follow supervisor's instructions and remain on site January 16, 2010. Mr. Welch was subsequently discharged on January 26, 2010 for the "accumulation of 75 demerit points".

There is no dispute that the grievor was operating the Brandt truck that had derailed, causing the assessment of demerits. The Union ha grieved that the Company assessed excessive discipline regarding the Hi-Rail accident and the discharge of the grievor was unjust.

The Union has grieved that the grievor has expressed remorse and admitted his shortcomings. The Union has requested that the grievor be immediately reinstated and made whole for all lost monies and benefits.

The Company contends that the discipline and discharge is warranted.

FOR THE UNION:

(SGD.) M. PICHÉ

STAFF REPRESENTATIVE

FOR THE COMPANY:

(SGD.) S. BLACKMORE

MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

- S. Blackmore – Manager, Labour Relations, Edmonton
- A. DeMontigny – Sr. Manager, Labour Relations, Montreal
- J. Hishmeh – Assisstant Track Supervisor, Toronto

And on behalf of the Union:

- M. Piché – Staff Representative, Toronto
- P. Wills – Chairman, Unit 23, Toronto
- J. Welch – Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor, while operating a Brandt Truck, a semi-tractor trailer with hi-rail equipment used for hauling equipment and rail cars, derailed his vehicle in MacMillan Yard on January 16, 2010. Upon a review of all of the facts the Arbitrator is satisfied that the derailment was contributed to, in substantial part, by the fact that the axle air bag pressure on the rear of the vehicle was adjusted to 12 psi, which was not a sufficient amount of air in the bags. I am satisfied that the grievor knew, or reasonably should have known, that the differential between the air bag pressure on his front axle of his vehicle could cause difficulties, and did in fact contribute to the derailment of his truck.

Part of the discipline assessed against the grievor, beyond the derailment itself, involves what the Company alleges was Mr. Welch's failure to remain available when instructed to do so by Supervisor John Hishmeh, who attended at the scene. It seems that after a brief conversation with Mr. Hishmeh, the grievor parked the Brandt truck in the parking lot and left work. Mr. Hishmeh maintains that he gave the grievor a clear instruction to remain available, which the grievor disregarded.

On a review of the material, the Arbitrator is satisfied that the grievor's negligence did contribute to the derailment, and that on that basis he was deserving of discipline. I am not persuaded, however, on the basis of the evidence, that Supervisor Hishmeh gave a clear directive to Mr. Welch that he should not leave the premises. The grievor's evidence is to the contrary, and I am inclined to accept it. It is notable that

while Mr. Hishmeh's statement, presumably filed at the disciplinary investigation, relates that the grievor failed to "stick around", no questions were put to the grievor in respect of that issue by the investigating officer.

It appears that the grievor's disciplinary record stood at thirty demerits prior to the incident in question. Mr. Welch is a long service employee, hired in 1977, who is four years from retirement after thirty-three years of service. The material before the Arbitrator discloses that he has received discipline on a number of occasions over the years, generally for behavioural problems. Rules violations and negligent work practices are not a big feature of his disciplinary record.

Given the length of the grievor's service, I am satisfied that a substitution of penalty is appropriate, if only on compassionate grounds, particularly as the Arbitrator is satisfied that the Company has not clearly established that he failed to follow his supervisor's direction. The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated forthwith into his employment, without compensation for wages and benefits lost and without loss of seniority. The forty demerits shall be removed from his record and the period from his discharge to his reinstatement shall be recorded as a suspension. It is to be hoped that Mr. Welch will appreciate the urgency of avoiding head-strong confrontations with supervisors if he wishes to complete his service towards a normal retirement.

September 20, 2010

(original signed by) MICHEL G. PICHER
ARBITRATOR