

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

CASE NO. 3935

Heard in Montreal, Wednesday, 15 September 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Assessment of discipline and resultant dismissal of Yard Conductor Beaudoin.

UNION'S STATEMENT OF ISSUE:

On January 22, 2009 the grievor was subjected to an Efficiency Test while employed as a yard helper on Assignment YRP003. The Company held an investigation on February 2, 2009 for an alleged violation of CROR 104(b). On February 21, 2009 the Company assessed the employee's record with 10 demerits.

On March 9, 2009 the grievor was employed in yard service at the Company's Montreal Yard. During this tour of duty Mr. Beaudoin experienced significant physical and emotional distress that left him unable to mentally and safely complete his tour of duty. Mr. Beaudoin booked sick and left the Company's premises. The Company held an investigation on March 16, 2009 and subsequently assessed the employee's record with 20 demerits on March 27, 2009. The Company also served the employee with a notice of dismissal, on the same date, for accumulation of demerits.

The Union appealed the discipline as being severe, unwarranted, inappropriate and in violation of the collective agreement.

It is the Union's position that the discipline was improper in all aspects and in violation of the collective agreement. It is the Union's position that the investigation was not held in a fair and impartial manner and therefore a violation of article 82. In all of the circumstances the Union relies on the position set forth at Step 3 of the grievance procedure and notes that the Company has failed to respond to the detailed position that was presented. In doing so the Company violated the provisions of article 84 and, as well, the Union submits that the Company is now estopped from raising further or new arguments with respect to these aspects they have chosen not to address.

It is also the Union's position that the discipline was excessive, inappropriate and unwarranted. The Union also protests the Company's violation of article 85.5 in that they have failed to exercise their rights in a reasonable fashion causing significant financial loss to both the grievor and the Union. The Union submits that a remedy is most apparent and warranted.

The Company disagrees with the Union's position.

FOR THE UNION:
(SGD.) J. M. ROBBINS
 GENERAL CHAIRMAN

There appeared on behalf of the Company:

A. Daigle	– Manager, Labour Relations, Montreal
D. Gagné	– Sr. Manager, Labour Relations, Montreal
L. De Felice	– Trainmaster, Montreal

And on behalf of the Union:

G. Gower	– Vice-General Chairman, Belleville
R. A. Beatty	– Transition Director, Sault Ste Marie
J. M. Robbins	– General Chairman, Sarnia
P. Boucher	– Local Chairman, Belleville
P. Vickers	– General Chairman, Sarnia

AWARD OF THE ARBITRATOR

This arbitration concerns two heads of discipline registered against the grievor. The first involves ten demerits for a violation of CROR rule 104(b) on January 22, 2009 while the second involves twenty demerits for having left work without authorization on March 9, 2009.

With respect to the first incident the Company relies on the eye witness account of Trainmaster Larry De Felice who observed the grievor from his truck when Mr. Beaudoin was operating a manual switch and instructing his locomotive engineer to back up once the switch was thrown. According to Mr. De Felice's observations the grievor simply threw the switch and immediately instructed the locomotive engineer to back up his movement. In the trainmaster's estimation the grievor could not have

verified whether the switch points were properly lined in the time it took him to communicate to the locomotive engineer. The grievor denies not having verified the switch points.

On the whole, bearing in mind that the Company has the burden of proof, the Arbitrator is left in some doubt as to the reliability of Mr. De Felice's observations. It does not appear disputed that it would have been entirely possible for the grievor to see the switch points as he handled the switch. At best the trainmaster's observation is that it appeared that it all happened too quickly. With respect, considering the seriousness of discipline in such a circumstance, I cannot find that the Company's proof in respect of this issue is conclusive, particularly given the categorical denial of Mr. Beaudoin, who maintains that he did see the switch points as required by CROR 104(b). In the result, I cannot find that a violation of the rule is established in the instant case, and the grievance must be therefore be allowed. The Arbitrator directs that the ten demerits assessed against the grievor be removed from record.

The second head of discipline involves the grievor's departure from work without authorization on March 9, 2009. The evidence discloses that on that date the grievor was served with notice of the ten demerits which are the subject of the grievance just considered. He also learned of the death of a co-worker as a result of a working accident, an event which obviously had a profound impact on him. It appears that the grievor commenced his tour of duty in the normal way. According to his account, after some two hours of work he felt himself no longer fit to operate by reason of personal

stress. It appears that he then gathered his personal effects and advised his two co-workers that he was leaving. According to his account he asked one of them, Mr. Charron, to relate the situation to his supervisor. It would appear that after the grievor's departure the two employees did communicate with the trainmaster to tell him that the grievor had left the premises.

It would appear that the grievor was not on the best terms with Trainmaster De Felice. Notwithstanding that, however, as an employee on duty he is clearly under an obligation to communicate directly with an appropriate supervisor to, at a minimum, advise that he felt himself no longer fit to work and would be leaving. It is simply not open to a person in the position of Mr. Beaudoin to summarily leave the premises without any notice to his superiors in circumstances which obviously bring the work which he and his crew were performing to a complete halt. As the Company's brief puts it, while it can appreciate the grievor's sadness at hearing about his colleague's passing, the facts do not justify his abandoning his assignment without seeking proper authorization. In the result, I am satisfied that the grievor did render himself subject to discipline for his departure from work on March 9, 2009.

The grievor is an employee of twenty-nine years of service. He has received discipline over the years, and his record stood at forty active demerits at the time of the two incidents here under consideration. Given the Arbitrator's ruling on the first issue, in fact he would have stood at forty demerits at the time the twenty demerits were assessed against him for leaving work without authorization. In my view a substitution of

penalty is appropriate. Given the longevity of the grievor's service, while accepting that the abandonment of his post was a serious infraction, I am satisfied that the reinstatement of the grievor subject to a lengthy suspension is appropriate.

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 demerits assessed against him shall be removed from his record and his disciplinary record shall stand at forty demerits.

September 20, 2010

(original signed by) MICHEL G. PICHER
ARBITRATOR