

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

**CASE NO. 3948**

Heard in Calgary, Tuesday 9 November 2010

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**EX PARTE**

**DISPUTE:**

Assessment of twenty-five demerits to Conductor Brynn Lintick of Calgary, Alberta for "Unauthorized extended absence from shift", and subsequent dismissal for accumulation of demerits in excess of sixty (60).

**COMPANY'S STATEMENT OF ISSUE:**

On May 17, 2010 the grievor was assigned as the Helper on assignment YCYS30, Calgary Yard, on duty at 1500. During this assignment, at approximately 22:00, the grievor informed his Foreman that he required a ten (10) minute break. The grievor failed to return to complete the balance of his assignment alleging his absence was due to unsafe actions and Rule violations by his Foreman.

The grievor was required to provide an employee statement with respect to the May 17, 2010 incident, and was subsequently assessed twenty-five demerits. These twenty-five demerits, coupled with the forty-four (44) demerits previously on the grievor's discipline record, resulted in discharge for accumulation demerits in excess of sixty (60) demerits.

The Union contends that the grievor and his Foreman were having difficulties on the tour in question due to the fact the grievor thought there were instances where his Foreman did not follow the proper protocols and work rules; the twenty-five (25) demerits assessed is neither reasonable nor justified; and that the discipline be expunged and the grievor be returned to work forthwith and 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:

P. Payne

– Manager, Labour Relations, Edmonton

K. Morris	– Sr. Manager, Labour Relations, Edmonton
D. Ryhorchuk	– Assistant General Manager, Edmonton
C. Mitchell	– Trainmaster, Calgary

There appeared on behalf of the Union:

M. Church	– Counsel, Toronto
R. A. Boechler	– Vice-General Chairman, Edmonton
B. Lintick	– Grievor

### **AWARD OF THE ARBITRATOR**

It is not disputed that the grievor left his assignment at Calgary Yard on May 17, 2010 some forty-five minutes before its completion. At 22:00 hours, approximately one hour before the end of his crew's tour of duty, Mr. Lintick advised his conductor, Mr. Jamie Schultz, that he needed a ten minute break. Mr. Schultz indicated his agreement and continued working on the assignment with a conductor trainee, Mr. Carson Thorne. In fact Mr. Lintick proceeded to the yard office lunch room and did not return to work.

The record confirms that Traffic Coordinator Jim Adamson overheard Conductor Schultz working with Trainee Thorne, via the radio. That caused him to inquire of Conductor Schultz as to Mr. Lintick's whereabouts. When Conductor Schultz indicated that he had no idea as to where the grievor was Mr. Adamson attempted to contact him by making a radio call, without success. Shortly thereafter Traffic Coordinator Adamson discovered Mr. Lintick in the yard office lunch room, at approximately 22:30 hours. When he asked him if he would be returning to work Mr. Lintick responded that he was too upset and felt unsafe working. When Mr. Adamson asked whether he was sick the grievor responded "No, I am sorry but I can't get my head into the game." Mr. Adamson then called Mr. Schultz to advise him to cease working and put away the crew's

locomotive. In the result, the switching assignment given to Mr. Schultz and Mr. Lintick was not completed as scheduled and had to be finished by another crew the next day.

When the Company subsequently conducted an investigation into the grievor's having left his duties, Mr. Lintick explained that he felt that he could no longer work because of what he described as unsafe practices being engaged in by Mr. Schultz. During the course of his statement he indicated a number of instances of what he considered to be unsafe practices by Mr. Schultz both on the evening in question and on other tours of duty when they had worked together. According to the grievor's account, when he had attempted to bring safety concerns to Mr. Schultz's attention his workmate was either unresponsive or hostile in his replies to Mr. Lintick.

The Company submits that its investigation did not confirm the allegations of unsafe practices on the part of Mr. Schultz made by Mr. Lintick. It maintains that Mr. Schultz's own statement, supported by the statement of Trainee Thorne, effectively rebutted the suggestion of Mr. Lintick that his conductor had been working in an unsafe manner. Based on the whole of the material gathered, the Company assessed twenty-five demerits against the grievor which, added to his prior record of forty-four demerits, resulted in his dismissal.

The Arbitrator must agree that if in fact Mr. Lintick simply abandoned his work early, to be paid for spending idle time in the yard office lunch room, a serious measure of discipline would be justified. However, a different result would be indicated if in fact Mr. Lintick did act out of concern for his own safety and the safety of operations.

Upon a careful review of the evidence I am satisfied that in fact Mr. Lintick did have a good faith concern about safety, and that that concern was grounded in what he perceived to be questionable practices of Mr. Schultz. I am satisfied that in fact Mr. Schultz was well aware of that concern. The evidence indicates that upon his return to the yard office Foreman Schultz came to Mr. Adamson's YTC workstation and asked him if he had seen Mr. Schultz do anything unsafe or which might have caused him concern. A memorandum from Mr. Adamson relates that that exchange occurred after he had overheard what sounded like a heated argument coming from the yard office. Based on all of that evidence the Arbitrator is satisfied, on the most probable inference, that in fact it was communicated to Mr. Schultz that the grievor's reason for leaving the work site was his own concern about the safety of Mr. Schultz's work practices. I am therefore satisfied that safety concerns were not something which the grievor invented only later, at the time of his disciplinary investigation.

The question remains, however, whether the grievor was liable to discipline. I am satisfied that he was. Whatever his concerns may have been, it was not open to Mr. Lintick to simply abandon his work without explanation to anyone whatsoever, withdrawing to the yard office lunch room to await the end of his shift. It was clearly incumbent upon him to notify a supervisor, and failing the availability of a supervisor, either a rail traffic controller or the yard traffic controller, Mr. Adamson, of the reason for his withdrawing from the workplace.

In dealing with this dispute the Arbitrator makes no comment upon whether there was merit as to the grievor's belief concerning the work practices of Mr. Schultz. Suffice it to say, for the purposes of this grievance, that I am satisfied that Mr. Lintick did have concerns in that regard, and that he held them in good faith. Unfortunately, his failure to understand the appropriate means by which to address those concerns led to the discipline which was imposed upon him, and his discharge. Having considered all of the evidence, I am satisfied that the grievor's discharge is excessive in all of the circumstances, albeit he did render himself liable to discipline. Because of his failure to be candid and direct with management as to what were arguably very serious concerns, he became the author of his own misfortune as regards the decision to terminate his employment. That decision was, at least on the face of it, not unreasonable given the extent of his prior discipline and the bare facts of his withdrawal from work on the evening of May 17, 2010.

The Arbitrator therefore directs that the grievor be reinstated into his employment forthwith, without compensation for any wages and benefits lost and without loss of seniority, with the twenty-five demerits to be removed from his record and the period between his termination and reinstatement to be recorded as a suspension for his having abandoned of his work without adequate explanation.

November 15, 2010

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**