

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

**CASE NO. 3957**

Heard in Montreal, Tuesday, 14 December 2010

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION  
AND GENERAL WORKERS UNION OF CANADA (CAW – CANADA)**

**DISPUTE:**

Dismissal of Heavy Equipment Operator Gilles Roy.

**JOINT STATEMENT OF ISSUE:**

On June 30, 2010, the grievor was assessed 40 demerits for “*les évènements survenus le lundi 17 juin 2010 alors que vous étiez opérateur de grue.*” He was then dismissed for accumulation of more than 60 demerits.

The Union contends that there was no just cause for discipline in respect to the grievor’s actions while he was operating his crane. In the alternative, it is submitted that the events were not such as to justify dismissal. The Union requests that the grievor be reinstated to his employment and made whole.

The Company denies the Union’s contentions and request.

**FOR THE UNION:  
(SGD.) A. ROSNER  
NATIONAL REPRESENTATIVE**

**FOR THE COMPANY:  
(SGD.) S. GROU  
SR. MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

C. Gilbert	– Manager, Labour Relations, Montreal
S. Grou	– Sr. Manager, Labour Relations, Montreal
M. Vachon	– Sr. Manager, Terminal Operations, Montreal
M. Malenfant	– Terminal Coordinator, Montreal
C. Laforest	– Lead Hand, Montreal

There appeared on behalf of the Union:

A. Rosner	– National Representative, Montreal
J. Savard	– Regional Representative, Montreal
A. St-Pierre	– Vice-president, Intermodal, Montreal
R. Robidoux	– Local Representative, Montreal
G. Roy	– Grievor

### **AWARD OF THE ARBITRATOR**

The material before the Arbitrator confirms that on June 17, 2010 the grievor was assigned to operate loading crane 10515 on the north side of track 3 at the Montreal Intermodal Terminal. At or about 21:10 hours Supervisor Michel Malenfant asked Lead Hand Christian Laforest to use the yard truck to go and get the grievor, Gilles Roy, for his break period. It was understood that during that time his crane would be operated by relief employee Daniel Laliberté, who proceeded to the grievor's crane in the truck driven by Mr. Laforest.

The record confirms, beyond controversy, that Mr. Laforest parked his truck some fifteen feet from the crane being operated by Mr. Roy, and had visual contact with him signalling that it was time for his break. However Mr. Roy did not respond as expected. Rather, he backed his crane at a brisk speed, stopping suddenly within a foot of Mr. Laforest's truck. As a blue flashing light was still operating, Mr. Laforest was aware that the machine still remained in reverse. He then quickly undertook to back his truck away, as Mr. Roy apparently continued his backward movement, apparently proceeding to the next container he had to handle.

The record confirms that Mr. Laforest then contacted Supervisor Malenfant to advise that the grievor was not coming, as expected. Mr. Malenfant then communicated with Mr. Roy by radio to advise him that he was to take his break at that time, that Mr. Laforest was sent to get him for that purpose and that Mr. Laliberté would take his place. It seems that Mr. Roy then responded to Mr. Malenfant that he would not get into

the vehicle operated by Lead Hand Laforest, providing no explanation. Mr. Malenfant then sent another lead hand to fetch Mr. Roy.

It appears that what ensued was an encounter between Mr. Malenfant and the grievor, as well as his Union representative, in the office. As Mr. Malenfant was explaining to Mr. Roy that his conduct was not acceptable it appears that Mr. Laforest arrived in the office and asked Mr. Roy why he backed his crane so close to his vehicle. It appears that Mr. Roy then erupted and shouted that Mr. Laforest should get away from him. It appears that following that incident Mr. Laforest left work in a shaken state.

After a disciplinary investigation Mr. Roy was assessed forty demerits and was terminated for the accumulation of demerits in excess of sixty, having an aggregate total of ninety-four demerits.

The Union does not dispute that the grievor made himself liable to discipline for his actions. It submits, in essence, that the only issue is the appropriate measure of discipline and argues that there are reasons to consider the reinstatement of the grievor, perhaps subject to conditions. The Union's representative notes, among other things, that the grievor did subsequently provide a written apology which was forwarded to the Company on November 28, 2010, with a copy to Mr. Laforest. He also notes that the grievor has undertaken treatment for anger management, as evidenced by an email communication from a social worker at the Montreal Centre for Anger Management.

After a careful review of the material, the Arbitrator is left in substantial doubt about the sincerity of the grievor's apology and his pursuit of help for anger management. As noted above, while the incident occurred on June 17, 2010 the apology from Mr. Roy was not forthcoming until November 28, 2010, virtually days before his arbitration hearing. Similarly, his involvement with anger management did not occur until his first encounter with the Centre for Anger Management on December 7, 2010, only a week before the hearing of his grievance.

Perhaps more disturbing is the grievor's prior disciplinary record. Over his nineteen years of service Mr. Roy has incurred substantial and recurring discipline for serious behavioural issues. The instant case involves the sixth occasion where unacceptable conduct has been the cause of discipline for Mr. Roy. The record confirms that his gross misconduct on April 11, 2006 resulted in his discharge, which was commuted to a suspension from April 21 to September 14, 2006. The record also includes an incident which occurred in May of 2009 where twenty-five demerits were assessed against Mr. Roy for apparently engaging in a dangerous movement of his crane, when he drove it and its elevated container directly in the direction of a parked vehicle in which two supervisors were situated. Notwithstanding that discipline, some thirteen months later he again engaged in what can only be interpreted as conducting a dangerous charge at the controls of his crane.

On a review of the whole of the record, the Arbitrator is not persuaded that the grievor is either sincere in his apology or in his belated commitment to exploring anger

management. For years he has had the benefit of progressive discipline for recurring incidents of unacceptable behaviour, unfortunately without any rehabilitative effect. There is little reason to believe that rehabilitation is now likely.

For all of the foregoing reasons the grievance must be dismissed.

December 22, 2010

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