

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

CASE NO. 3959

Heard in Montreal, Wednesday, 15 December 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The discharge to Conductor Andrew Taylor, for accumulation of demerits effective 11 September 2009.

JOINT STATEMENT OF ISSUE:

On 11 September 2009, the Company issued the grievor a Form 780 identifying that he was discharged from the Company's service for his accumulation of demerits in excess of 60.

It is the Union's position that the discipline assessed, in consideration of all the factors relating to this matter is unfounded and unwarranted and should be removed in its entirety. The Union requests that the discipline assessed be removed from his record and that the grievor be made whole.

The following issues are in relationship to the eventual accumulation of demerits in excess of 60:

The issuance of 30 demerits effective 8 September 2009 for his purported responsibility in the derailment TILX 200383 in L029 while working L541 31 04 on 4 September 2009 at the CN MacMillan Yard.

The issuance of 25 demerits effective 19 May 2009 for his purported responsibility for the damage to the fence while switching a customer at W143.

The issuance of 15 demerits effective 27 May 2009 for the circumstances surrounding his failure to follow GOI Section 8.12.7 Hand Operated Switches on May 27, 2009 while working as a brakeman on L54131 27.

The issuance of 25 demerits effective 6 May 2009 for his failure to comply with CN's attendance management Policy Eastern Division Notice 019 on May 6, 2009 resulting in a missed call.

In view of the above the Union argues the discipline assessed in each issue was excessive in the least and request that the discipline be substituted to a verbal warning to ensure continued compliance.

The Company disagrees and deems that the discipline assessed was both warranted and appropriate in these instant cases.

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

FOR THE COMPANY:
(SGD.) S. M. FUSCO
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

S. M. Fusco – Manager, Labour Relations, Toronto
D. Gagné – Sr. Manager, Labour Relations, Montreal

There appeared on behalf of the Union:

J. Robbins – General Chairman, Sarnia

AWARD OF THE ARBITRATOR

This arbitration concerns four heads of discipline, as reflected in the joint statement of issue. Upon a review of the file the arbitrator is satisfied that the grievor was deserving of some discipline in all four incidents. However, there are mitigating factors to consider.

Mr. Taylor returned to yard service after many years of working exclusively in Go Train service. He was given little or no orientation or retraining in yard and road operations, notwithstanding his requests in that regard. While he is obviously responsible for the errors he committed, to some degree they are attributable to his inexperience in yard assignments.

I am of the view that given his prior 20 years of good service, this is an appropriate case for a substituted penalty. The Arbitrator therefore directs that the grievor be reinstated forthwith into his employment, with no loss of seniority and with no compensation for his wages and benefits lost. The period between Mr. Taylor's termination and reinstatement shall be recorded as a suspension for the four infractions, with the demerits removed from his record, which shall then stand at 15 demerits. Upon his reinstatement the grievor shall be subject to a period of orientation and retraining in yard and road operations of not less than forty working days.

December 22, 2010

(signed) MICHEL G. PICHER
ARBITRATOR