

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

CASE NO. 3962

Heard in Montreal, Thursday 16 December 2010

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

**TEAMSTERS CANADA RAIL CONFERENCE
RAIL CANADA TRAFFIC CONTROLLERS**

DISPUTE:

Appeal of the assessment of fifty (50) demerits to Rail Traffic Controller Hugh Nugent.

JOINT STATEMENT OF ISSUE:

On February 26, 2010, Rail Traffic Controller Nugent attended an investigation for his alleged failure to protect a TOP by failing to properly line the switches during his tour of duty at Seaway Tower on February 24, 2010. Following this investigation, the Company assessed RTC Nugent's record with 50 demerits for violation of RTC Bulletin R580/580F and CROR rules 849 and 618.1a.

The Union contends that the assessment of discipline was excessive and not progressive. The Union requests a reduction of the 50 demerits in RTC Nugent's file.

The Company disagrees and denies the Union's request.

FOR THE UNION:
(SGD.) S. BROWNLEE
GENERAL CHAIRWOMAN

FOR THE COMPANY:
(SGD.) A. AZIM GARCIA
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

B. Deacon – Labour Relations Officer, Calgary
M. Thompson – Labour Relations Officer, Calgary

There appeared on behalf of the Union:

S. Brownlee – General Chairwoman, Stony Plain
C. Clark – Local Chairman, Montreal
F. Zamarria – Vice-Local Chairman, Montreal

AWARD OF THE ARBITRATOR

The material before the Arbitrator does confirm that the grievor made himself liable to discipline. Because of his oversight in failing to properly line switches during his tour of duty he effectively caused a passenger train to enter territory where maintenance crews were working under the protection of a Track Occupancy Permit (TOP). Fortunately the train's movement was seen by the maintenance foreman who immediately caused the passenger train to come to a stop before any damage or injuries could result. Nevertheless, the incident is extremely serious and can be fairly characterized as the equivalent of a cardinal rule violation committed by a train crew.

The only issue is the appropriate measure of discipline. In the Arbitrator's view the assessment of fifty demerits is slightly excessive in the circumstances. As a general rule the assessment of forty demerits is more common within the industry for an initial cardinal rule infraction, absent compelling mitigating circumstances. I am satisfied that that standard should apply in the case at hand.

The grievance is therefore allowed, in part. The Arbitrator directs that the discipline assessed against Mr. Nugent be reduced to reflect the assessment of forty demerits for the error committed by the grievor on February 24, 2010.

December 22, 2010

(signed) MICHEL G. PICHER
ARBITRATOR