

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

**CASE NO. 3963**

Heard in Montreal, Thursday 16 December 2010

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE  
MAINTENANCE OF WAY EMPLOYEE DIVISION**

**DISPUTE:**

The assessment of 30 demerits and dismissal for accumulation of demerits to Mr. A. Wynne.

**JOINT STATEMENT OF ISSUE:**

On December 1, 2008, the grievor, Mr. A. Wynne, was issued a form 104 advising him that he was being assessed 30 demerits for a rules (TOP) violation. On the same day the grievor was issued another Form 104 advising him that he was being dismissed for an accumulation of demerits. A grievance was filed.

The Union contends that: (1) Mitigating factors existed that should have served to reduce the amount of discipline assessed. (2) The discipline assessed to the grievor, in particular his dismissal, was excessive and unwarranted in the circumstances.

The Union requests that the grievor be reinstated immediately without loss of seniority and with full compensation for all wages and benefits lost as a result of this matter.

The Company denies the Union's contentions and declines the Union's request.

**FOR THE UNION:**  
**(SGD.) WM. BREHL**  
NATIONAL PRESIDENT

**FOR THE COMPANY:**  
**(SGD.) DAVID**

There appeared on behalf of the Company:

|             |                                      |
|-------------|--------------------------------------|
| M. Thompson | – Labour Relations Officer, Calgary  |
| K. Hein     | – Manager, Labour Relations, Calgary |
| B. Lockerby | – Labour Relations Officer, Calgary  |

There appeared on behalf of the Union:

|             |                              |
|-------------|------------------------------|
| Wm. Brehl   | – President, Ottawa          |
| D. Brown    | – Counsel, Ottawa            |
| W. Phillips | – Local Chairman, Belleville |

### **AWARD OF THE ARBITRATOR**

The material before the Arbitrator confirms that the grievor improperly cancelled TOP protection for a siding at Pays Plat on October 26, 2008. It appears that the grievor held a number of TOPs on both sidings and sections of main track and when he attempted to obtain yet another TOP he was advised that he could have no more than five, and that he must therefore cancel one of his pre-existing TOPs.

Believing that the employees who were previously on the Pays Plat siding would have left that location, he cancelled the TOP for that siding. In fact they were still in that location, and consequently were left without any TOP protection by virtue of the grievor's actions. It does appear, however, that because the grievor held track occupancy permits for a substantial section of the main line, including access to the siding in question, the situation created was something less than one of immediate peril.

There can be no doubt but that the grievor did commit what the Company properly characterizes as a cardinal rule violation, a violation of a kind which could have created an extremely perilous situation. I must agree with the employer that it is of little consequence for the purposes of the quality of the grievor's actions that other factors, including his holding of a TOP over a broad section of connecting main line track, can be said to reduce his responsibility for what occurred.

The only real issue in the instant grievance is the quantum of discipline that is appropriate. While the Arbitrator can readily understand why the Company assessed

thirty demerits, resulting in the discharge of the grievor for an accumulation of demerits, I am satisfied that there are grounds in the case at hand for a substitution of penalty. The record before me confirms that the bulk of the prior discipline accumulated by Mr. Wynne was by reason of chronic attendance difficulties experienced over a substantial period of time. That discipline was coincident in time with the grievor not then being in control of his condition as an alcoholic. That problem has clearly resolved itself since the grievor was reinstated into his employment following a dismissal for the accumulation of demerits in late 2004. In fact the record does disclose that the grievor, who has twenty years of service, does not have any prior extensive disciplinary record for operating rules violations.

In the result, the Arbitrator concludes that the grievance should be 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 thirty demerits assessed against his record shall be removed, and the period between the date of his termination and his date of reinstatement shall be recorded as a suspension for the events of October 26, 2008.

December 22, 2010

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