

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

CASE NO. 3965

Heard in Montreal, Tuesday, 11 January 2011

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the discharge of Locomotive Engineer Mike Simpkins effective January 20, 2010.

JOINT STATEMENT OF ISSUE:

On December 19, 2009, Locomotive Engineer Simpkin's crew's train was involved in a collision with preceding train 2/298-16 at Mile 159.31, Weyburn Subdivision. Following an investigation into this incident on January 20, 2010 Locomotive Engineer Simpkin's employment was terminated by the Company as described on Form 104:

The Union contends that the penalty of discharge is unwarranted and excessive in all of the circumstances including significant mitigating factors evident in this matter.

The Union requests that Locomotive Engineer Simpkins be reinstated without loss of seniority or benefits and that he be made whole for all lost earnings, with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and denies the Union's request.

FOR THE UNION:

(SGD.) D. ABLE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) G. DECCICIO
VICE-PRESIDENT, CANADIAN OPERATIONS

There appeared on behalf of the Company:

D. J. Corrigan	– Labour Relations Officer, Calgary
D. Freeborn	– Manager, Labour Relations, Calgary
D. Purdon	– Superintendent, Winnipeg
A. Pompizzi	– Road Manager, Montreal
C. Wolak	– Trainmaster, Montreal

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Toronto
G. Edwards	– Sr. Vice-General Chairman, Calgary
D. Able	– General Chairman, Calgary
R. Purcell	– Local Chairman, Moose Jaw
D. Fulton	– Sr. vice-General Chairman, Calgary
M. Simpkins	– Grievor

AWARD OF THE ARBITRATOR

The grievor was dismissed from his employment following a serious rear-end collision and derailment. On December 18, 2009 Mr. Simpkins was assigned as locomotive engineer on train 870-013 along with Conductor Glenn Pohl, who was then a locomotive engineer trainee. They operated in straightaway service from Moose Jaw to North Portal, travelling southward down the Weyburn Subdivision, operating a relatively heavy movement with two head end locomotives, one tail end locomotive and 108 loaded coal cars.

In keeping with the on-the-job training program, Locomotive Engineer Trainee Pohl was put in control of the locomotive during the tour of duty. As they approached North Portal the RTC provided them with yarding instructions which included a caution with respect to a train which was ahead of them. They were instructed that train 298-16 would be utilizing the principal track at North Portal ahead of them. They were therefore directed to "... protect against train 298-16 south from the north siding switch Centennial". In other words, they were to exercise vigilance to ensure that their movement could stop safely behind train 298-16, which was stopped at North Portal. It is also significant to note that the section of track approaching North Portal is considered Non-Main track, a condition during which crews must operate at a reduced

speed in accordance with CROR rule 105, meaning that they must be able to stop within one-half the range of vision of any equipment.

Unfortunately, in the dark and foggy conditions of the night a situation of critical disorientation occurred. Non-main track commences at Mile 158 of the Weyburn Subdivision. It does not appear disputed that at that location there are a number of signs on both sides of the track indicating the end of main track and the beginning of non-main track. It appears that as they passed through that territory Mr. Simpkins was occupied doing the Conductor's work thereby allowing Mr. Pohl to operate the locomotive. When subsequently asked whether he saw the critical North Portal mileage sign Mr. Simpkins explained that he was gathering his paperwork and cleaning up the locomotive cab, and so was not paying attention to them. When Mr. Simpkins finally did ask Mr. Pohl what their location was in relation to North Portal the locomotive engineer trainee responded that he was not sure. Shortly thereafter Mr. Simpkins looked up and saw the tail end of train 298-16 directly ahead of them.

The grievor's train then collided with the rear end of train 298-16, derailing seven hazardous goods cars from that train and causing damages to another train, train 199-15 which was on a siding adjacent to train 298-16. While fortunately no injuries were suffered, the resulting damage was in excess of 1\$M and the track territory was disabled for a considerable period of time.

After a careful review of the evidence the Arbitrator is satisfied that the responsibility of Mr. Simpkins for what occurred cannot be fully equated with that of Mr. Pohl. The content of Mr. Pohl's disciplinary investigation reveals that he and Mr. Simpkins had formulated a plan whereby he would set the mile counter on his locomotive at the mile board to SNS North Portal. That would enable them to use the counter as a guide to know when they entered 105 territory as well as the distance to the crossing at Mileage 159.27 where they were to stop. I consider it significant that Mr. Pohl apparently set the mileage counter, but unbeknownst to himself or Mr. Simpkins, he did not do so at the proper location, the mile board to SNS North Portal. As he conceded in his investigation statement: "I'm not sure now where I set the counter." In other words, while Mr. Simpkins was doing paper work Mr. Pohl apparently failed to see the mile board to North Portal and consequently did not set his locomotive's mileage counter at proper time and place. It appears that when Mr. Simpkins finally asked him how far they had to go to North Portal Mr. Pohl responded that they had passed the mile approach board by 1,700 feet. That was an obviously incorrect estimate. Mr. Pohl confessed to having no clear idea as to where he in fact set the mileage counter. On a foggy night, at the head end of a 14,000 tonne train, Mr. Pohl's failure to identify and navigate by correct mileage boards left both him and Mr. Simpkins effectively unaware of their actual whereabouts, causing their train to descend on the rear end of train 298-16 at a speed of 21.1 miles per hour.

The Arbitrator accepts that Mr. Simpkins, who was in charge of the training run being operated by Mr. Pohl, must be viewed as bearing substantial responsibility for

what occurred. It was among his obligations to ensure that the mileage board for North Portal and the entry into Rule 105 territory were clearly identified and respected so as to ensure the proper operation and eventual stopping of their train at North Portal. There are, however, mitigating factors to be considered with respect to Mr. Simpkins' involvement in the collision, as well as the length and quality of his prior service to the Company.

As noted above, Mr. Simpkins was not at the control of the locomotive when the critical operating errors were made by Mr. Pohl. As Mr. Simpkins was responsible for the conductor's functions, he was involved in doing paperwork and tidying the cab of the locomotive in anticipation of yarding their train. In the result, it was Mr. Pohl who effectively missed the mileage board and who seems to have set the locomotive's mileage counter in such a way as to give no reliable indication of the actual location of the train. If anything, Mr. Pohl's setting of the mileage counter would have caused Mr. Simpkins to have a false sense of security as to their actual location. That was obviously not assisted by the fact that Locomotive Engineer Simpkins had limited familiarity with the subdivision, not having worked on it for several years.

Over his career Mr. Simpkins has been an exemplary employee, having been chosen to represent the Company in the "Operation Life Saver" program which involved Company presentations to schools, business, safety meetings, media and driver education classes. His record was discipline free since June of 1998 and he had in fact not received any demerits since August of 1995, a period of over fourteen years. It is

also clear, as stressed by counsel for the Union, that Mr. Simpkins has expressed profound regret for what occurred and has not attempted to deny his responsibility for his own error in judgement.

The Arbitrator is satisfied that this is an appropriate case for a substitution of penalty, albeit a very serious one. Given the length of Mr. Simpkins' prior service I am satisfied that he deserves another chance.

The grievance is therefore 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 period of time between the grievor's termination and his reinstatement shall be recorded as a suspension for the events of December 19, 2009.

January 17, 2011

(SIGNED) MICHEL G. PICHER
ARBITRATOR