

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

**CASE NO. 3969**

Heard in Montreal, Tuesday, 11 January 2011

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the assessment of a seven-day suspension on behalf of Conductor Ed Buchan of Winnipeg, assessed for "Your violation of CROR rule 112 (b) at Portage la Prairie, Rivers Sub, while Conductor on train M31451-29 on May 30, 2009."

**JOINT STATEMENT OF ISSUE:**

While working as Conductor on Train 314 on May 30, 2009, Conductor Ed Buchan was observed by Trainmaster Miles Rutherford who determined that he did not comply with the brake effectiveness test requirements in accordance with CROR Rule 112 (b).

He was required to provide an employee statement with respect to this, following which he was assessed discipline in the form of a seven-day suspension for his failure to comply with CROR Rule 112 (b).

It is the Union's position that Mr. Buchan fully complied with the proper test in accordance with CROR Rule 112 (b), and that the discipline assessed in this incident was unwarranted and should be expunged from his record, and that Mr. Buchan should be made whole.

The Company disagrees with the Union's contentions.

**FOR THE UNION:**

**(SGD.) R. A. HACKL**  
FOR: GENERAL CHAIRMAN

**FOR THE COMPANY:**

**(SGD.) D. BRODIE**  
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

|                   |  |
|-------------------|--|
| D. Brodie         | – Manager, Labour Relations, Edmonton                |
| D. VanCauwenbergh | – Director, Labour Relations, Toronto                |
| J. Orr            | – Assistant Vice-President, BC South                 |
| S. Bahl           | – Assistant Superintendent, Transportation, Winnipeg |

M. Rutherford – Trainmaster, Winnipeg

There appeared on behalf of the Union:

D. Ellickson – Counsel, Toronto  
 B. R. Boechler – General Chairman, Edmonton  
 R. A. Hackl – Vice-General Chairman, Edmonton  
 B. Willows – General Chairman, Edmonton  
 T. Markewich – Sr. Vice-General Chairman, Edmonton  
 E. Buchan – Grievor

### **AWARD OF THE ARBITRATOR**

Upon a review of the evidence the Arbitrator is satisfied that the grievor did, as alleged by the Company, violate CROR rule 112(b) on May 30, 2009. The evidence confirms that on that date he cut off a set of cars in track RG-24 At Portage-La-Prairie. He was then observed by Trainmaster Miles Rutherford who concluded that after he had secured the hand brakes on the cars to be left in the track, and uncoupled them from the train, he failed to perform a push-pull test in accordance with CROR rule 112(b). The purpose of that test is to ensure that the cars are properly secured by the handbrakes. According to the report filed by Mr. Rutherford he then approached the grievor and told him that he must perform the test contemplated under rule 112(b). Partly in response to the trainmaster Mr. Buchan apparently said “Why, is that what you want? ... Are you not in a hurry today?”

During the subsequent disciplinary investigation Mr. Buchan maintained that he had in fact performed a test consistent with the requirements of CROR 112, which reads, in part, as follows:

**112. SECURING EQUIPMENT**

- (a) When equipment is left at any point a sufficient number of hand brakes must be applied to prevent it from moving. Special instructions will indicate the minimum hand brake requirements for all locations where equipment is left. If equipment is left on a siding, it must be coupled to other equipment if any on such track unless it is necessary to provide separation at a public crossing at grade or elsewhere.
- (b) Before relying on the retarding force of the hand brake(s), whether leaving equipment or riding equipment to rest, the effectiveness of the hand brake(s) must be tested by fully applying the hand brake(s) and moving the cut of cars slightly to ensure sufficient retarding force is present to prevent the equipment from moving. When leaving a cut of cars secured, and after completion of this test, the cut should be observed while pulling away to ensure slack action has settled and that the cars remain in place.

Mr. Buchan maintains that he did in fact move the cut of cars slightly after he had set the hand brakes, when he was instructing his locomotive engineer to move the train so as to provide sufficient slack for him to uncouple the cars. He states that that movement did cause a slight movement of the cut of cars, as a result of which he was confirmed in the knowledge that they were secure.

The Arbitrator has some difficulty with the credibility of that account by Mr. Buchan. If, as he maintains, he had in effect done a movement test in compliance with CROR 112, it is difficult to understand why he did not immediately explain that to Mr. Rutherford when the latter effectively accused him of having failed to respect the rule. While it may be that the kind of manoeuvre described by Mr. Buchan might well comply with rule 112, a matter which in any event is not fully litigated in this case, I am not persuaded on the evidence that in fact such a test was performed by him at the time. It seems reasonable to conclude, on the balance of probabilities, that if he had performed

that test he would have made that clear to Mr. Rutherford at the time. Rather, such comments as he did make seemed only addressed to the question of saving time.

The record confirms that the grievor stood at fifty demerits at the time of this incident. The assessment of any further demerits would have in all likelihood resulted in his dismissal. I am satisfied that in the circumstances a suspension was appropriate and that a seven day suspension was not outside the range of appropriate penalty given the state of the grievor's disciplinary record.

For the foregoing reasons the grievance must be dismissed.

January 17, 2011

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