

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

CASE NO. 3973

Heard in Montreal, Thursday, 13 January 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

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

DISPUTE:

- (1) 30 demerits assessed for being absent from the workstation without having a responsible employee monitor the communications and control devices on desk DS-3 May 28, 2009, while absent from the desk was observed reading non-railway material in violation of General Rule A(xi) and RTC Manual Item 701 and delay to M38331-27 lifting at Paris resulting in a violation of RTC Manual Item 700.
- (2) 20 demerits assessed for irregularity in the issuance of TOP Number 5223 to Foreman Stephen Laurin during tour of duty on DS-3, June 6th, 2009.
- (3) 29 demerits assessed for violation of CN's Drug and Alcohol Policy when attending an employee formal investigation on June 8, 2009, resulting in discharge for accumulation of 100 demerit marks.

JOINT STATEMENT OF ISSUE:

The Union contends that Mr. Petix is a long service employee who has demonstrated that he is able to work long periods of time discipline free. The Union contends that the discipline assessed in all of the disputes above is not progressive and was excessive, and it must be reduced.

The Union requests that Mr. Petix be reinstated without loss of seniority.

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

FOR THE UNION:

**(SGD.) S. BROWNLEE
GENERAL CHAIRWOMAN**

FOR THE COMPANY:

**(SGD.) S. BLACKMORE
MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

R. Bateman – Sr. Manager, Labour Relations, Toronto
P. Lavoie – Officer, RTC Operations, Toronto

There appeared on behalf of the Union:

S. Brownlee – General Chairwoman, Stony Plain
M. Boucher – Vice-General Chairman, Montreal
K. D. Shanahan – Local Chairman, Toronto

AWARD OF THE ARBITRATOR

The instant arbitration concerns three separate heads of discipline and their related grievances on behalf of Rail Traffic Controller P. Petix.

The first incident concerns the assessment of thirty demerits for the grievor having absented himself from his work station, causing delay to a train at Paris, Ontario on May 28, 2009. The record reveals, beyond controversy, that during his tour of duty on that day the grievor took continuous smoke breaks outside the workplace, on what appears to have been eleven separate occasions. At one point he was observed in a smoking shelter reading non-railway material in circumstances where it appears he had made no express arrangement for his desk to be covered in his absence. The second incident involves the assessment of twenty demerits for the grievor having failed to issue a TOP using the last name of a foreman. Contrary to normal practice and guidelines, he used the foreman's first name, a practice which is plainly incorrect. The final assessment of discipline, being twenty demerit points resulting in his discharge for accumulation of one hundred demerits was as a result of the Company's conclusion that the grievor violated its Drug and Alcohol Policy when he attended an employee formal investigation into the two prior incidents, an investigation which was held on June 8, 2009.

The record reveals that persons in attendance at the investigation smelled alcohol on the grievor's breath. When he agreed to undertake a breathalyser test he registered at 0.023% BAC. He registered that reading at 12:39 p.m., and had then been on the Company premises for approximately one and a half to two hours. Based on a rough estimate that his BAC count would have been reduced by approximately 0.01% for each passing hour, the Company deduced that at the time he arrived for the disciplinary investigation the grievor would have had, in all probability, a BAC in excess of 0.04%, the permissible cut-off level found in the Company's Drug and Alcohol Policy. In the result, it concluded that the grievor violated that policy by being on Company premises with an excessive amount of alcohol in his system.

The Arbitrator is satisfied that all three incidents were deserving of discipline. I accept the Company's analysis of the grievor's alcohol levels. Given the overall disciplinary record amassed by Mr. Petix I am not inclined to disagree that the levels of demerits assessed by the Company would have been justifiable. However, on a larger view of his employment history, I consider that there are mitigating factors to be taken into account.

Mr. Petix is an employee of twenty-seven years' service. While he did suffer a discharge in 1997 by reason of a violation of CROR rule G, he was then reinstated into employment subject to the conditions of an ongoing employment contract. Over the years, from 1997 to 2009, Mr. Petix generally registered relatively minor discipline in the form of written reprimands or demerits at the level of ten or fifteen points, generally for procedural errors. In effect, seventy of the one hundred cumulative demerit points which led to his discharge were assessed in May and June of 2009, in relation to the three incidents which are here under review. On the whole, given the length of the grievor's service and its relative quality at least for a substantial period of years prior to 2009, I am not persuaded that Mr. Petix is beyond rehabilitation. It appears to the Arbitrator that he can be reinstated into employment, subject to conditions fashioned to protect the Company's interests.

The grievance is therefore allowed, in part. The Arbitrator directs that Mr. Petix be reinstated into his employment forthwith, without loss of seniority and without compensation for any wages or benefits lost. Mr. Petix' reinstatement shall be conditional on his accepting to honour the terms of a reinstatement agreement which shall include his undertaking to abstain from the consumption of alcohol and drugs for not less than two years, and in that regard to be subject to periodic random testing for drug or alcohol consumption, to be administered in a non-abusive fashion. Any failure on the part of the grievor to honour the conditions of his reinstatement shall be grounds for the termination of his employment.

January 17, 2011

(signed) MICHEL G. PICHER
ARBITRATOR