

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

CASE NO. 3974

Heard in Montreal, Thursday, 13 January 2011

Concerning

**SOUTHERN ONTARIO RAILWAY
RAIL AMERICA**

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The assessment of discharge to Mr. M.C. Smith, effective 10 March 2009, for his "failure to properly secure your train on the Ontario Hydro Spur, Mile 0.00 Hagersville Subdivision on February 11, 2009 and while employed as a Train Service Employee."

JOINT STATEMENT OF ISSUE:

On February 11, 2009, Mr. Smith was working on train 0900 Hagersville Switcher. At the end of their tour of duty the train had to be secured, 4 locomotives and 43 cars. The train was not secured properly, the brakes released and the train ran uncontrolled. A derailment occurred at a split switch mile 1.9 of the Hydro Spur involving dangerous goods tank cars.

An investigation was conducted and Mr. M. Smith was dismissed March 10, 2009 from the service of Southern Ontario Railway for failure to properly secure the train on the Hydro Spur Mile 0.00 Hagersville Subdivision on February 11, 2009 while employed as a Train Service Employee.

The Union contends that the ultimate discipline of discharge was unwarranted, unfair and outside the norm under the circumstances and requests that Mr. M. Smith be reinstated without loss of seniority and be compensated for the lost time and benefits. The Company never considered all the mitigating factors that led to this incident.

The Company considers this train derailment as a most serious event which, when taking into account with Mr. Smith's short service and prior discipline record, warrants the assessed penalty of discharge.

The Company therefore disagrees with the Union's contentions.

**FOR THE UNION:
(SGD.) R. LECLERC
GENERAL CHAIRMAN**

**FOR THE COMPANY:
(SGD.) P. TOUSENARD
REGIONAL VICE-PRESIDENT**

There appeared on behalf of the Company:

J. P. Krawec	– Consultant, Toronto
P. Touesnard	– Regional Vice-President, Rail America, Toronto
D. MacKenzie	– General Manager, S.O.R.

There appeared on behalf of the Union:

R. Leclerc	– General Chairman, Grand-Mère
M. Smith	– Grievor

AWARD OF THE ARBITRATOR

This discharge involves a relatively harrowing event. By an admitted failure on the part of the grievor, a train comprised of four locomotives, twenty-six loaded cars and seventeen empty cars rolled free on the Ontario Hydro Spur of the Hagersville Subdivision reaching speeds of twenty-one miles per hours over a distance of 1.4 miles before it derailed near an Ontario Power Generating Plant (OPG) at Nanticoke. Nine cars derailed, seven of which were loaded with gasoline. Three of the gasoline cars leaked their contents, fouling both the ground and ground water in the area. The overall damage, including the destruction of three hundred feet of track, exceeded 1.6\$M in cost. Fortunately, although the runaway train did go through one rural level crossing, no personal injuries were incurred.

The record confirms that on February 11, 2009 Mr. Smith, who has long service in the railway industry, including service as a locomotive engineer for CN, and who was newly hired for the instant Company in 2008, was assigned to the 09:00 Hagersville assignment as assistant conductor, working with Conductor G. Wedlock and

Locomotive Engineer Dana Wedlock. At the conclusion of their tour of duty the Wedlocks, who are father and son, left together on the understanding that the grievor would secure the train on the Ontario Hydro Spur. It was understood that the subsequent crew which would be handling train shortly would be operating in a different direction. It appears that Mr. Smith then turned off the status of the first locomotive as the lead, but did not transfer the leading status to the fourth locomotive, in anticipation of the train's movement in the opposite direction. In effect, he allowed all four locomotives to be left in trailing mode. At the risk of over-simplification, what that meant was that the train was ultimately left with a fully released air braking system, an obviously unsecure situation on the 1% grade where it then found itself. It would seem that the only securing measure taken by Mr. Smith was to apply the hand brake on what was formerly the lead locomotive. It does not appear disputed that he should have also applied a hand brake at the other end of the consist, in addition to designating one of the locomotives as the lead, which would have ensured a continued air brake application.

Only some four minutes after he left, an event recorder shows that the unsecured train began to roll southward at an increasing speed which eventually reached 20.7 mph before it struck a derail close to the OPG Plant at Nanticoke, after travelling some 1.4 miles. The derailment involved several hazardous goods cars and the spillage of substantial quantities of gasoline.

A subsequent investigation conducted by the Transport Safety Board of Canada (TSB) found a number of errors committed by Mr. Smith, including those related herein. It also found that the Company had taken insufficient measures to ensure that its crews were following safe practices. For example, it does not appear disputed that the train should have been secured in nearby Garnett Yard, and not left on the sloping track of the spur. In that regard the report of the TSB includes, in part, the following:

Findings as to Causes and Contributing Factors

1. The accident occurred when the crew left the train unattended on a one per cent grade, without the train being properly secured. Subsequently, the train rolled uncontrolled downgrade for 1.4 miles, across an unprotected crossing, reaching a speed of 20.7 mph before it encountered a split switch derail and derailed the nine tail-end cars.
2. The automatic brake valve was prematurely moved to the “cutout” position, trapping a pressure gradient within the train air brake line. As the pressure gradient equalized, it sequentially activated the quick service release of the air brakes on all freight cars behind the locomotives.
3. Because no other locomotive in the consist was set in the controlling position, the supply of air pressure required to maintain independent brakes was cut off, which permitted all locomotive independent brakes to bleed off and release.
4. With all freight car and locomotive air brakes released, the absence of a sufficient number of handbrakes applied left the train unsecured.
5. The train crew and company deviated from a number of standard operating practices associated with train securement, each of which increased the risk for an uncontrolled movement to occur and contributed to the accident.
6. With only one crew member left at the end of the shift, the other crew members did not have an opportunity to verify whether the train was properly secured.
7. Insufficient company oversight allowed the deviations in standard operating practices to occur.

Following a disciplinary investigation the Company dismissed Mr. Smith for his involvement in the runaway of the train and its derailment. In doing so it took into account that he had been previously disciplined, on September 11, 2008 when a seven

day deferred suspension was assessed against him, also for a violation of CROR rule 112, for failing to have properly secured a cut of cars. It appears that on that occasion cars which were not properly secured ran out and fouled another track, impacting other cars which had been left standing at that location.

The Union argues that there are mitigating factors of some importance. It highlights those parts of the TSB report which indicate a degree of laxity on the part of the Company in the instruction and oversight of its crews, a report which apparently has brought about some internal changes. Having carefully reviewed that report, however, the Arbitrator is not compelled to the conclusion that the Company's own failings are such as to absolve the grievor of his own very grave errors in the case at hand. Mr. Smith is a qualified locomotive engineer whose past service allowed him to maintain locomotive engineer qualification well into the year 2010. In my view he knew, or reasonably should have known, the importance of designating one of the locomotives in the consist as a lead locomotive, as an essential part of securing the train on the Ontario Hydro Spur. While it may be that much of the work which he has performed in recent years is as a conductor, I am not persuaded that he should not be held to the standard of the qualification which he holds as a locomotive engineer.

In my view the matter is further aggravated by the prior disciplinary record incurred by Mr. Smith. Only a few months prior to the incident here under review, in August of 2008, he was involved in a violation of the same rule, CROR rule 112, when

cars that he was to secure were in fact left standing unsecured, causing them to roll out of their storage track, resulting in a collision.

When the whole of the record is examined, including the seriousness of the event of February 11, 2009 which caused extensive damage, I am satisfied that the Company did have grounds to assess the most serious discipline, and that this is not a proper case for a substitution of penalty.

For all of the foregoing reasons the grievance must be dismissed.

January 17, 2011

(signed) MICHEL G. PICHER
ARBITRATOR