

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

CASE NO. 3982

Heard in Calgary, 8 March 2011

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Assessment of thirty (30) demerits to Conductor M. Currier of Edmonton for "failure to comply with the direction of the Yardmaster and failure to comply with Item 5.2 of the Edmonton Terminal Manual.

COMPANY'S STATEMENT OF ISSUE:

On March 22, 2009, the grievor was called as the conductor for the YRXS60 yard assignment, on duty at 23:30. During the assignment the grievor was instructed by the Traffic Coordinator to complete the required switching work prior to tying up the assignment. Despite the direction of the Traffic Coordinator, the grievor did not finish the switching work as directed and notified his crew that their shift was concluded and to tie up the power.

The grievor was required to provide an employee statement with respect to the work refusal on March 22, 2009 and was subsequently assessed thirty (30) demerits.

The Union contends that the grievor did not understand the requirements of the collective agreement, based on his actions on that misunderstanding and there is not cause to assess such an exceedingly heavy measure of discipline.

The Company disagrees with the Union's contentions.

FOR THE COMPANY:

(SGD.) P. PAYNE

FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

P. Payne	– Manager, Labour Relations, Edmonton
K. Morris	– Sr. Manager, Labour Relations, Edmonton
M. Merson	– Assistant Superintendent Transportation, Edmonton
A. Egey-Samu	– Risk Management Officer, Edmonton

R. Baker – Trainmaster, Edmonton
 D. Gagné – Sr. Manager, Labour Relations, Montreal

There appeared on behalf of the Union:

M. A. Church – Counsel, Toronto
 B. R. Boechler – General Chairman, Edmonton
 R. A. Hackl – Vice-General Chairman, Edmonton
 A. W. Franko – Vice-General Chairman, Edmonton
 M. Currier – Grievor

AWARD OF THE ARBITRATOR

There can be no doubt but that on March 22, 2009 Mr. Currier improperly refused to work overtime when instructed to do so by the Traffic Coordinator who was in charge of the yard in which he was working. The evidence confirms that some fifteen minutes prior to the completion of his tour of duty the grievor was contacted by the West Tower Traffic Coordinator in Edmonton who inquired as to whether he and his crew would finish the work assigned to them. He replied that they would not be able to do so. Shortly thereafter, when he contacted the Traffic Coordinator to arrange for transportation for his crew to complete their tie up at the end of their tour of duty, he was advised that they would have to continue switching on an overtime basis. For reasons which he best understands, Mr. Currier then asserted his interpretation of article 100.3 of the collective agreement which concerns the providing of a hot meal for employees required to work more than one hour of overtime. Notwithstanding the repeated instructions of the Traffic Coordinator, apparently augmented by a clear direction also given to him by Supervisor of Train Operations Jack Ammar, the grievor continued to refuse to work the overtime he was ordered to perform. He in fact advised the STO and the Traffic Coordinator that he had instructed his crew to cease work as they had reached the end of their shift. Overhearing the debate, Assistant Superintendent Michael Merson intervened to advise the grievor that he was removed from service pending an investigation.

What the record before the Arbitrator reveals is clearly the refusal of an employee to honour the “work now – grieve later” principle. Of substantial concern is the fact that during the course of the ensuing disciplinary investigation Mr. Currier

expressed no regret at his actions and gave no indication that he understands that he conducted himself in a manner which could attract serious discipline. On that basis the Company assessed thirty demerits against his disciplinary record.

The Arbitrator can readily appreciate the Company's concern. The need for an employee to comply with directions, save in the extreme case where they may be unlawful or clearly unsafe, was well expressed in **Re United Steelworkers and Lake Ontario Steel Company Ltd.** (1968), 19 L.A.C. 103 (P. C. Weiler). In that award the board of arbitration referred to the following comment made by Professor Schulman in **Ford Motor Company** 3 L.A. 779

But an industrial plant is not a debating society. Its object is production. When a controversy arises, production cannot wait for exhaustion of the grievance procedure. While that procedure is being pursued, production must go on until the controversy is settled. That authority is vested in supervision. It must be vested there because the responsibility for production is also vested there; and responsibility must be accompanied by authority. It is fairly vested there because the grievance procedure is capable of adequately recompensing employees for abuse of authority by supervision.

See also **CROA 3228, 3622 and 3903.**

The only real issue in the case at hand is the appropriate measure of discipline. Accepting that the grievor is a relatively junior employee of limited experience, some mitigating value can be given to the fact that he might simply not understand the need to respect authority in the operation of an industrial enterprise, notwithstanding that he may have a differing interpretation of the collective agreement. In my view the assessment of thirty demerits, which represents one half the road to discharge, is somewhat excessive, particularly given that Mr. Carrier had never previously been assessed any demerits whatsoever, albeit he had received a written reprimand (**CROA&DR 3981**). I am satisfied that the assessment of twenty demerits would have been sufficient to bring home to him the importance of respecting the "work now – grieve" later rule.

The grievance is therefore allowed in part. The Arbitrator directs that the discipline against the grievor be reduced to twenty demerits for the incident of March 22, 2009.

March 14, 2011

(signed) MICHEL G. PICHER
ARBITRATOR