

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

**CASE NO. 3983**

Heard in Calgary, 8 March 2011

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**EX PARTE**

**DISPUTE:**

Assessment of twenty (20) demerits to Conductor M. Currier of Edmonton, Alberta for "failure to comply with GOI section 8, 4.5.3 during the 18:30 Extra yard Assignment on May 28, 2009."

**COMPANY'S STATEMENT OF ISSUE:**

On May 28, 2009, the grievor was called as the brakeman for YBXS30 yard assignment, on duty at 18:30. During this assignment the grievor was observed by a Company officer lining a switch and then proceeding to cross over the tracks in front of yard movement, failing to maintain safe distance from equipment according to GOI section 8, 4.5.3 – Working On or Near Tracks.

The grievor was required to provide an employee statement with respect to the violation of GOI section 8, 4.5.3 and was subsequently assessed twenty (20) demerits.

The Union contends that the Company officer, from his location, could not have estimated the distance between the standing equipment to that of the grievor, that the grievor was not hurt during his lining of the switch nor were there any accidents or equipment damage. As such, the discipline assessed the grievor is unfair, unwarranted and should be expunged forthwith.

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**

The Company alleges that the grievor violated GOI section 8, 4.5.3 during the course of his extra yard assignment on May 28, 2009. On the basis of a report by Trainmaster Aron Egey-Samu it concluded that Mr. Currier detrained from a locomotive which had come to a stop, threw switch CF-68 and thereafter crossed the track in front of the locomotive at a distance of some seven to ten feet, rather than respecting the requirement of a distance of twenty-five feet as stipulated in Rule 4.5.3.

The account of the grievor is entirely different from that of the trainmaster. Under cross-examination the trainmaster stated that the grievor's train had a consist attached, although he could not recall its precise size. He further indicated that upon seeing what occurred he proceeded immediately to the location of the locomotive and the switch at storage track 68 where he explained to the grievor that he had followed an incorrect and unsafe procedure. He states that he had a further encounter with Mr. Currier some ten to fifteen minutes later in track CF-54, again explaining to him that he had violated Rule GOI section 8, 4.5.3.

Mr. Currier maintains that in fact he was not in charge of a train proceeding in the direction recounted by Mr. Egey-Samu, but rather was operating light engines, in the process of moving cars in and out of adjacent storage tracks. According to Mr. Currier, he was in control of the locomotive by the operation of a belt pack and, in accordance

with his normal practice, he disembarked from the engine and allowed it to proceed approximately a half car length's distance before bringing it to a stop and throwing the switch. As he relates it, the point of the switch was then at least twenty-five feet from the locomotive when he crossed the track. He further states that the trainmaster did not approach him at that location or at that time, but only later at track CF-54.

It is trite to say that in this case, which involves discipline, the burden of proof is upon the Company. It must satisfy the Arbitrator, on the balance of probabilities, that the facts which its witness relates are correct. With respect, that burden is not discharged in this case. Firstly, I accept the suggestion of counsel for the Union that for the trainmaster to have observed the grievor from his truck at a distance of some five hundred feet, from a location on the same relatively straight track, it is doubtful that he had sufficient perspective to make any accurate judgement as to the distance between the grievor and the locomotive. The fact that the locomotive may have been closer to the switch than twenty-five feet when he reached the location is, in my view, not inconsistent with the grievor's account of how he proceeded, allowing the locomotive to move away some twenty-five feet and then bringing it back by use of the belt pack once he had thrown the switch and crossed the track. Nor, as a general matter, do I consider that the trainmaster's recollection is such as to be substantially relied upon. By his own account he made no contemporary notes of the event and wrote an extremely brief memo only days later, in fact on the same day as the investigation which ensued. On all material points I am compelled to conclude that the testimony of the grievor is to be preferred..

The grievance is therefore allowed. The Arbitrator directs that the twenty demerits assessed against the grievor be removed from his record forthwith.

March 14, 2011

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