

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

CASE NO. 3984

Heard in Calgary, 8 March 2011

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Assessment of forty (40) demerits to Conductor M. Currier of Edmonton, Alberta for "Violation of GOI section 8, 12.7" and subsequently discharged for accumulation of demerits in excess of sixty (60).

COMPANY'S STATEMENT OF ISSUE:

On May 17, 2010, the grievor was called as the brakeman for train L51151-17. While performing switching at Scotford, the grievor was observed by Company officers first standing then jumping on the ergonomic switch handles.

The grievor was required to provide an employee statement with respect to the violation of GOI section 8, 12.7 – Hand-Operated Switches and was subsequently assessed forty (40) demerits.

As the grievor had fifty (50) active demerits on his discipline record, when coupled with the forty (40) demerits for this incident, the grievor was discharged for accumulation of demerits in excess of sixty.

The Union contends that the grievor admitted that he was in error, he knows the proper procedures for lining a switch, that he used poor judgement and regrets making this mistake. Therefore, the discipline assessed to the grievor is very extreme and should be mitigated to a much lesser degree and the grievor returned to work and made whole.

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:

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| 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:

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|----------------|-----------------------------------|
| 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 material before the Arbitrator confirms that the grievor improperly attempted to manipulate an ergonomic switch handle by applying pressure to it with his feet while performing switching at Scotford on May 17, 2010. It appears that his actions were observed by two Company supervisors. In fact he does not dispute having improperly applied pressure to the switch handle by using his feet, apparently being unaware that a switch point was being jammed by a pebble. He relates that although he inspected the switch points he could not see anything, as the pebble was apparently close in colour to a patch of grease where it was lodged.

Following the investigation the Company assessed forty demerits against the grievor, as an apparent doubling of discipline, considering that it had previously assessed twenty demerits against him for allegedly crossing a track in close proximity to a locomotive, a measure of discipline which was in fact removed by this Office in **CROA&DR 3983**.

The issue becomes the appropriate amount of discipline to be assessed against the grievor in the circumstances. The Arbitrator cannot readily agree with the Company's characterization of the grievor as a person who has demonstrated a pattern of disregard for important safety rules and practices. In fact, while he was counselled for

unsafely reaching over a draw bar on April 16, 2009, his disciplinary record contains no prior incident of any unsafe practice, given the dismissal of the demerits assessed against him in **CROA&DR 3983**. While that does not diminish the seriousness of the incident here under examination, I am satisfied that the assessment of forty demerits is substantially excessive in all of the circumstances. In my view the assessment of twenty demerits would suffice in the circumstances to bring home to the grievor the importance of following safe practices.

The grievance is therefore allowed, in part. The Arbitrator directs that the discipline assessed against the grievor for the incident of May 17, 2010 be reduced to twenty demerits and that he consequently be reinstated into his employment, without compensation for any wages or benefits lost, with his disciplinary record to stand at forty demerits. The grievor should appreciate that the reduction of his demerits from sixty to forty is done in the spirit of giving him a second chance to demonstrate that he can work safely and in compliance with all directions given to him by his supervisors as required by the operating rules by which he must be governed.

March 14, 2011

(signed) MICHEL G. PICHER
ARBITRATOR