

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

CASE NO. 3987

Heard in Calgary, Thursday, 10 March 2011

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

DISPUTE:

Dismissal of Mr. J. Myles.

JOINT STATEMENT OF ISSUE:

On January 12m, 2010, the grievor, Mr. J. Myles, was assessed with 20 demerits for his involvement in the derailment of a ballast regulator. In addition, he was dismissed from Company service for an accumulation of demerits. A grievance was filed.

The Union contends that: **(1)** The grievor's actions cannot be considered as so serious as to have constituted an irrevocable breach of the employer/employee relationship; **(2)** Other disciplinary options were available to the Company and, in the circumstances, should have been utilized; **(3)** The grievor's dismissal was unfair and unwarranted.

The Union requests that the grievor be reinstated into Company service forthwith without loss of seniority and under such conditions as the arbitrator deems appropriate.

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

FOR THE UNION:
(SGD.) WM. BREHL
PRESIDENT

FOR THE COMPANY:
(SGD.) M. GOLDSMITH
LABOUR RELATIONS OFFICER

There appeared on behalf of the Company:

M. Goldsmith	– Labour Relations Officer, Calgary
K. Hein	– Manager, Labour Relations, Calgary
M. Thompson	– Labour Relations Officer, Calgary
B. Lockerby	– Labour Relations Officer, Calgary

And on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. Brown	– Counsel, Ottawa
S. Brighton	– Local Chairman, Revelstoke

AWARD OF THE ARBITRATOR

The material confirms that the grievor has experienced a series of rules violations which caused the accumulation of seventy-five demerits, resulting in his termination. Virtually all of the discipline was incurred for negligence or safety related infractions. In May of 2009 he was given ten demerits for having pulled away a rail another employee was grinding while he was operating his speed swing. In June of 2009 he was assessed a further ten demerits for violating the rule against the use of a personal cell phone while operating a speed swing. In September of 2009 he damaged an AEI reader, for which he was assessed five demerits. In November of 2009 he was given ten demerits for running the engine of a ballast regulator which was low on engine oil. Subsequently he was assessed a further twenty demerits for a second violation of the prohibition against the use of a cell phone while at work.

The culminating incident, which resulted in the assessment of twenty demerits and the grievor's termination for the accumulation of demerits, involved his having derailed a ballast regulator by inadvertently contacting a derail on November 18, 2009.

It is clear that the Company is correct in characterizing the grievor as an employee who has recorded an unacceptable series of mishaps and rule violations with safety dimensions that caused considerable concern. There is, however, a mitigating dimension which is raised by the Union and which I believe has some merit. The Union's representatives note that during the first five work seasons of his career with the

Company, between 2004 and 2008, Mr. Myles received absolutely no discipline. Virtually all of the difficulties which he encountered occurred between May and November of 2009. It is submitted that his uncharacteristic decline in performance was related, in substantial part, to personal stresses and difficulties which he had in relation to a particular supervisor.

In the Arbitrator's view this is an appropriate case to grant the employee a second chance. The fact that he was able to work discipline free for a substantial period of years would suggest that the unfortunate series of event in 2009 was, as the Union argues, uncharacteristic.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith without loss of seniority and without compensation for his wages and benefits lost. The twenty demerits shall be removed from his record and suspension for the period between his termination and his reinstatement shall be substituted.

March 14, 2011

(signed) MICHEL G. PICHER
ARBITRATOR