

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

CASE NO. 3988

Heard in Calgary, Thursday, 10 March 2011

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

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

DISPUTE:

The dismissal of Mr. D. Curtis.

JOINT STATEMENT OF ISSUE:

On April 19, 2010, the grievor was assessed with 90 demerits for his involvement in a track unit collision on January 27, 2009 and was dismissed for an accumulation of demerits. A grievance was filed.

The Union contends that: **(1)** The grievor is a long service employee having started with the Company in 1977; **(2)** Other disciplinary/rehabilitative options were available to the Company that should have been utilized in the circumstances; **(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. THOMPSON
LABOUR RELATIONS OFFICER

There appeared on behalf of the Company:

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

And on behalf of the Union:

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

AWARD OF THE ARBITRATOR

Upon a close review of the evidence the Arbitrator has substantial difficulty with the submission of the Union in this grievance. The record confirms that while assigned to snow clearing duties on the Nemegos Subdivision on January 27, 2009 the grievor operated a hy-rail equipped caterpillar backhoe, with the specific assignment of clearing hy-rail set off points at various locations. He was required to occasionally vacate the main track to allow trains to pass, thereafter sometimes following a train in its path. At 12:56 Mr. Curtis was given a behind-train TOP which allowed him to follow behind train 8828 East. He then obtained a subsequent TOP at 13:32. Shortly thereafter, when the RTC inquired of him as to his progress he responded that he had reached the east switch at Stralak but had blown a hose and derailed and was having difficulty moving his track unit. At 14:13 he again advised the RTC that he was still having difficulties and asked if help could be sent. It appears that the RTC notified the crew of eastbound train 9738, who were in a nearby siding, to give him help. The RTC also advised Track Maintenance Supervisor Ron Watkinson of the grievor's problems, which prompted Mr. Watkinson to reach Mr. Curtis by radio. Again Mr. Curtis indicated to Mr. Watkinson that he had blown a hose and would require track jacks for him to clear the track.

Not long thereafter Track Maintenance Foreman René Castelloux arrived at the scene to help Mr. Curtis. He discovered that Mr. Curtis was injured and immediately transported him to a local hospital for treatment.

What emerged from the ensuing investigation conducted by the Company is a disturbing account, entirely inconsistent with the information which Mr. Curtis was providing to the rail traffic controller as well as his supervisors. A camera on the trailing locomotive of train 8828 East, apparently activated by the detection of motion, recorded Mr. Curtis' hy-rail loader proceeding directly towards the locomotive at the rear end of the train and colliding with it with substantial force. In addition to causing damage to the grievor's on-track vehicle, the collision damaged three hose bag couplers from the extremity of the locomotive, which were later found thrown away nearby, down the bank of the roadbed.

Mr. Curtis was severely injured. His injuries included a collapsed lung, several broken ribs and a serious head injury. Following the incident he was hospitalized for a week and thereafter was unable to work for a period of fourteen months.

The Arbitrator is satisfied that what occurred was an attempt on the part of Mr. Curtis to cover up his serious rear-end collision with train 8828 East and a deliberate attempt to deceive the Company with respect to what had occurred. While it is true, as the Union's representative stresses, that he was assessed ninety demerits and discharged for a number of infractions, including failing to properly report the incident to the proper authority, the Arbitrator is compelled to agree with the Company that the circumstances of the collision and the actions of the grievor did call into account his general trustworthiness and the viability of his ongoing employment.

That is particularly so when regard is had to the grievor's prior disciplinary record. Although he is an employee of thirty-three years service, he has an unenviable record of discipline for repeated rules' infractions, some of which involved collisions. His first track unit collision was recorded in 1999. Thereafter he incurred discipline in 2002, 2003, 2004, 2005, 2007, 2008 and 2009. All of the foregoing incidents involved rules related violations, six resulting from the unsafe operation of Company equipment and four involving track unit collisions, at least one of which caused a serious injury to another employee.

With respect to the able arguments submitted on behalf of the grievor by his Union, I am not persuaded that this is a case for a mitigation of penalty, notwithstanding the grievor's long service. Over a period of ten years he demonstrated a repeated inability to respond to progressive discipline aimed at rehabilitating him towards working safely and with care and respect for all operating rules. And while it is true that his notice of discipline did not specifically cite his attempt to cover up what occurred, the fact that he did is nevertheless an aggravating factor which can be taken into account in

assessing whether the Arbitrator's discretion should be exercised to reduce the penalty in the case at hand.

While I can appreciate the motive behind the Union's suggestion that an appropriate penalty might involve a demotion to the rank of labourer, so that the grievor can continue to work the remaining years towards an unreduced pension, I find it difficult to square that treatment with his overall disciplinary record and his conduct during the course of the culminating incident. Nor is that a remedial course that would be supported by the nature of the evasive and misleading answers given by the grievor during the course of the subsequent disciplinary investigation conducted by the Company. There is, very simply, no responsible basis upon which the grievor can be returned to a workplace which, in a general sense, is highly safety sensitive and in which a substantial degree of trust is essential.

For the foregoing reasons the grievance must be dismissed.

March 14, 2011

(signed) MICHEL G. PICHER
ARBITRATOR