

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

**CASE NO. 3992**

Heard in Montreal, 13 April 2011

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**MAINTENANCE OF WAY EMPLOYEES DIVISION**

**DISPUTE:**

Dismissal of Mr. Dennis Mews.

**JOINT STATEMENT OF ISSUE:**

On December 21, 2010, the grievor was assessed with 60 demerits for a rules violation and dismissed for an accumulation of demerits. A grievance was filed.

The Union contends that: **1.** The commenced Company service in June 1997. During his career with the Company he was the recipient of discipline on only three occasions. **2.** The Company did not consider other measures that could have been taken in the circumstances such as deferred discipline or demotion/restriction. **3.** The dismissal of the grievor was unwarranted and excessive in the circumstances.

The Union requests that the grievor be reinstated into Company service immediately under such conditions as the Arbitrator deems appropriate in the circumstances.

**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  
R. Hampel – Counsel, Calgary

And on behalf of the Union:

Wm. Brehl – President, Ottawa  
D. W. Brown – Counsel, Ottawa  
A. R. Terry – Vice-President, Ottawa

## AWARD OF THE ARBITRATOR

The sole issue in this grievance is whether it is appropriate to substitute a penalty lesser than discharge, in particular a demotion, in light of the grievor's disciplinary history. The instant grievance arises as a result of the termination of Track Maintenance Foreman Mews, as a result of his second failure to observe the restrictions of a track occupancy permit (TOP) within a seven month period.

The culminating incident occurred on November 18, 2010. In his capacity as track maintenance foreman Mr. Mews was then assigned to work with a Sperry crew to detect track defects. Two contractor employees were then under his responsibility. During the course of his duties he took out TOP No. 1827 and a follow-up TOP which gave him authority to occupy main track between Carseland and Strangmuir on the Brooks Subdivision, subject to remaining behind a train identified as CEFX 1029 West. In other words, the grievor and the workers under his care were not to enter the territory in question until train CEFX 1029 West had passed out of the territory. In fact Mr. Mews placed his high-rail vehicle on the track and entered the territory, by his own account having forgotten that the train had not yet passed. Shortly thereafter he encountered the oncoming CEFX 1029 West which, fortunately, was operating at a highly reduced speed by reason of the presence of a further train in the vicinity. In the result, the train was able to stop short of a collision with the grievor who, in fact, was able to reverse his vehicle and remove it from the track without further incident.

The Arbitrator readily appreciates the Company's concern. It appears that on April 26, 2010 Mr. Mews had been involved in a very similar TOP infraction. He disregarded the restriction of not entering protected territory until a particular train had passed. That incident resulted in the assessment of thirty demerits. By a doubling of discipline, the sixty demerits for the culminating incident of November 18, 2010 brought the grievor's accumulated demerits to the level of ninety, clearly a dismissable position. The Company also relies upon the fact that in 2004 the grievor failed to stop his Brandt truck sufficiently in time to avoid a collision with a BTMF truck, an incident which resulted in the assessment of thirty demerits. It submits that in all of the circumstances the grievor's termination was justified.

The Union's representatives do not dispute the seriousness of the incident which led to the grievor's discharge nor the general importance of respecting TOP restrictions. They maintain, however, that notwithstanding the cardinal rule violation which occurred, precedent within the industry, and indeed within the decisions of this office, suggests that there are appropriate cases for the demotion of an employee in such a circumstance, rather than summary termination. In that regard the Arbitrator is referred to a number of prior awards, including **AH 548**, **CROA 2487** and **CROA 3555**. Special emphasis is put on two separate cases: **CROA 1664** and **CROA 2672**. Both of the latter grievances involved union members who were subject to a permanent demotion, with restrictions, rather than discharge for similar cardinal rules violations.

Having considered these submissions, I am satisfied that it is appropriate to substitute a penalty in the case at hand. The grievor has been disciplined on only three occasions in some thirteen years of service. Apart from the two cardinal infractions which occurred in 2010, he can be said to have had a relatively positive disciplinary record. I do share the Company's view, however, that the repeated violations of the TOP restrictions are serious offences. In the circumstances I deem it appropriate to return the grievor to work, however in a position other than track maintenance foreman, or indeed any position which would have him holding track occupancy permits.

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 wages and benefits lost. He shall be returned to a demoted position in which he has no responsibility for holding track occupancy permits. That condition shall remain until such time as the Company deems it appropriate to change it. The period between the grievor's termination and reinstatement shall be recorded as a suspension for the events of November 18, 2010.

April 18, 2011

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