

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

CASE NO. 3998

Heard in Montreal, Thursday 14 April 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The assessment of 15 demerits effective June 9, 2010 to the record of Halifax Brakeman Munroe, ultimately resulting in his discharge for accumulation of seventy (70) demerits.

JOINT STATEMENT OF ISSUE:

On June 9, 2010, Brakeman Munroe was required to attend a formal statement in connection with the violation of CROR rule 113 and GOI 8-12.10 while working as brakeman on train L50911-09. Following the investigation, Mr. Munroe's record was assessed 15 demerits resulting in his dismissal, effective July 16, 2010, for accumulation of seventy (70) demerits.

It is the Union's position that the discipline assessed was excessive, unwarranted and inappropriate. In addition, it is the Union's position that the Company violated articles 82 and 85. The Union requests that the grievor be reinstated without loss of seniority and benefits and that he be compensated for all lost earnings as a result of the discharge. In the alternative, that the discipline assessed be reduced accordingly in consideration of all the mitigating factors.

The Company disagrees with the Union's position.

FOR THE UNION:
(SGD.) J. R. ROBBINS
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.) A. DAIGLE
FOR: SR. VICE-PRESIDENT

There appeared on behalf of the Company:

A. Daigle	– Manager, Labour Relations, Montreal
D. Gagné	– Sr. Manager, Labour Relations, Montreal
D. Larouche	– Manager, Labour Relations, Montreal
J. Parsons	– Trainmaster, Halifax

And on behalf of the Union:

G. Gower	– Vice-General Chairman, Belleville
I. Munroe	– Grievor

AWARD OF THE ARBITRATOR

The Company alleges that the grievor failed to comply with CROR rule 113(e). The rule in question deals with coupling to equipment and reads as follows:

113(e) When coupling to equipment for any purpose except when humping or flat switching where cars are intentionally let run free, the coupling must be stretched to ensure it is secure.

To the same effect, GOI, Section 8, Item 12.10(2) provides as follows:

2. Stretching when Coupling

Except when humping or flat switching where cars are going to be let run free, the coupling must be stretched to ensure it is secure prior to coupling air hoses, attempting to make additional couplings, or pushing equipment.

The record before the Arbitrator confirms that on June 9, 2010 the grievor was part of a crew switching at the Autoport at Dartmouth, Nova Scotia. On that occasion Trainmaster Jeffrey Parsons conducted efficiency testing observations of the crew.

When Mr. Parsons observed the operation, as the grievor was involved in coupling to cars left in storage tracks DA07 and DA08, he believed that he observed that there was no attempt by the crew to stretch the cars after coupling, using the locomotive, to ensure that a firm coupling had occurred. His subsequent conversation with the grievor confirmed that the grievor had not used the locomotive to stretch the two couplings he had made. On that basis, the grievor was summoned to a disciplinary investigation and subsequently discharged for the accumulation of demerits, after the assessment of fifteen demerits for his alleged violation of CROR rule 113 and GOI 8-12.10. It is common ground that no investigation was made of any other member of his crew, including his conductor and his locomotive engineer, or a trainee who was also working with the grievor that day.

During the course of the disciplinary investigation Mr. Munroe related that as the cars which he was coupling onto were either single or few in number, there was a

natural stretching movement which occurred upon the coupling. He submits that he observed that stretching as a means of confirming that in fact the coupling of the cars was secure. The Union argues that what he observed is in fact in technical compliance with the stretching requirement of CROR rule 113.

The Company's representative submits that the mere observation of a natural stretch taking place during the coupling of the cars is not what is contemplated in the rule. She submits that there must be some engagement of the locomotive to exert pressure on the joint to ensure that it has properly secured. In the Company's view it is in that sense that the concept of stretching the coupling is intended to operate within rule 113(e).

The Arbitrator has difficulty with two aspects of the Company's case. Firstly, rule 113(e) makes no reference to how the stretching is to occur for the purposes of verifying that a coupling has been properly secured. The Union's representation is that it is not uncommon practice for employees to observe the movement of a single car or a small number of cars being coupled to as a means of observing an actual stretching that verifies that the coupling is properly made. In light of those unchallenged comments, I find it difficult to conclude that there was a fundamental disregard of the requirements of CROR rule 113 by the grievor on the occasion here under examination.

Secondly, and of equal importance, is the troubling fact that there appears to have been no disciplinary attention paid to any of the other members of the grievor's crew. His conductor, who bore greater responsibility for the overall operation and who was in radio contact with the grievor at all material times, must be taken to have been equally responsible to the extent that he plainly did not hear any command from the grievor to the locomotive engineer instructing him to stretch the movement to verify the coupling. The same can be said of the locomotive engineer. It is unclear to the Arbitrator on what basis the Company decided to neither investigate nor assess any discipline against any of the other members of the grievor's crew who were equally responsible for the coupling operations being performed at that time.

On the foregoing basis I am compelled to conclude that the discipline against the grievor cannot stand. The grievance is therefore allowed. The grievor shall be reinstated into his employment forthwith, without loss of seniority and with compensation for all wages and benefits lost.

April 18, 2011

(signed) MICHEL G. PICHER
ARBITRATOR