

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

CASE NO. 4002

Heard in Montreal, Tuesday, 10 May 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Assessment of thirty (30) demerits to Conductor Rick Comartin of Edmonton, Alberta for "Violation of GOI section 8, 12.4 on October 6, 2010" and subsequent discharge for accumulation of demerits in excess of sixty (60).

COMPANY'S STATEMENT OF ISSUE:

On October 16, 2010 the grievor was assigned as the conductor on train G83451-14, operating from Jasper to Edmonton. After yarding the train in Walker Yard the crew was instructed to proceed with the locomotive consist to the Diesel Shop. While the locomotive was entering the shop track, the grievor was observed by a Company officer riding on the locomotive consist in an unsafe manner and in violation of GOI Section 8, Item 12.4.

The grievor was required to provide an employee statement with respect to the unsafe act and was subsequently assessed thirty (30) demerits. As the grievor already had fifty-five (55) active demerits on his discipline record, the grievor was discharged for accumulation of demerits in excess of sixty (60).

The Union contends that the discipline assessed to the grievor is discriminatory treatment inconsistent with the fair administration of discipline., the Union requested the discipline be replaced with a letter reflecting Coach and Counsel and he be reinstated and his record be made whole.

The Company denied the request and disagrees with the Union's contentions.

FOR THE COMPANY:

(SGD.) P. PAYNE

FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

P. Payne	– Manager, Labour Relations, Edmonton
K. Morris	– Sr. Manager, Labour Relations, Edmonton
D. VanCauwenbergh	– Director, Labour Relations, Toronto
M. Merson	– Assistant Superintendent, Edmonton
T. Brown	– General Manager, Winnipeg

There appeared on behalf of the Union:

M. A. Church	– Counsel, Toronto
B. R. Boechler	– General Chairman, Edmonton
R. A. Hackl	– Vice-General Chairman, Edmonton

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that Conductor Comartin of Edmonton did improperly ride the side ladder of a leading locomotive while it was operating on the shop track in violation of General Operating Instructions Section 8, Item 12.4, on October 16, 2010 in Walker Yard. Following an investigation the Company assessed thirty demerits against his discipline record, a record which already had accumulated fifty-five active demerits. He was therefore discharged for the accumulation of demerits in excess of sixty.

This is an unfortunate case, as the grievor has some thirty-two years of service with the Company. Most critically, his disciplinary record is extremely negative. The record reveals that his discipline has stood at fifty-five demerits since 2007. He was subsequently disciplined by way of three separate suspensions for two operating violations and one missed call, to save him from discharge. Further, he was discharged and thereafter reinstated by an order of this Office, without compensation, in 2009 (**CROA&DR 3772**). Finally, the Company again discharged the grievor for a missed call

on November 9, 2009 for which he was assessed twenty demerits. In that case, the Company and Union voluntarily agreed to modify the discipline to a suspension without pay, returning the grievor to service on a last chance basis. That was the rather lamentable situation of the grievor's disciplinary record at the time of the incident of October 16, 2010.

Counsel for the Union suggests that the grievor's disciplinary history is substantially rooted in issues of attendance and missed calls. I cannot agree. A careful review of the entirety of his record, and in particular his record since 2005, confirms that his offences have involved both missed calls and a substantial number of rule violations, more particularly since 2007.

On the whole, I am compelled to conclude that the Company has demonstrated forbearance in the disciplinary treatment of the grievor, giving him every reasonable opportunity to maintain his employment and demonstrate his ability to operate in accordance with operating rules. Unfortunately he has failed to improve his performance. Even if I were to accept that the assessment of thirty demerits is excessive for the infraction which led to his ultimate discharge, a matter upon which I make no comment, the assessment of as few as five demerits would nevertheless have resulted in his termination. I can see no basis for any mitigation of the penalty in all of the circumstances.

For these reasons the grievance must be dismissed.

May 16, 2011

(signed) MICHEL G. PICHER
ARBITRATOR