

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

CASE NO. 4017

Heard in Montreal, Wednesday, 13 July 2011

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

The discharge of Conductor Steven Pass of Vancouver, B.C. for being involved in a car accident while operating a CN vehicle.

UNION'S STATEMENT OF ISSUE:

On October 3, 2009, Conductor Pass was operating a CN vehicle while on duty in order to expedite the installation of an SBU on the last car of his movement,

Conductor Pass made a U-turn and was involved in a car accident resulting in a citation being issued with respect to the accident. Following an investigation, Conductor Pass – who had no active discipline on his record – was discharged.

The Union submits that the discipline assessed was excessive and inappropriate and, in any event, discharge was not warranted in the circumstances, especially given the fact that Conductor Pass was not obligated to operate a motor vehicle in the performance of his duties.

The Company responded to the Union advising that it would not accept the Union's "letter" as a grievance due to time limits and refused to address the merits of the Union's grievance.

The Union acknowledges that the time limits in the collective agreement have been exceeded but there are extenuating circumstances which the Company is fully aware of that make this an appropriate case for the extension of time limits and requests that the arbitrator exercise his discretion under the *Code* to do so.

FOR THE UNION:

(SGD.) R. A. HACKL

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. Crossan – Manager, Labour Relations, Prince George
D. VanCauwenbergh – Director, Labour Relations, Toronto

K. Morris	– Sr. Manager, Labour Relations, Edmonton
N. Hart	– Assistant Superintendent, BC South
P. Payne	– Manager, Labour Relations, Edmonton

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
J. Robbins	– General Chairman, CN Lines Central, Sarnia
D. Pass	– Grievor

AWARD OF THE ARBITRATOR

There is no dispute as to the facts giving rise to this grievance. On October 3, 2009 while working on the Lynn Creek Yard Transfer Assignment, Conductor Pass had to use a Company vehicle to carry a Sensory Braking Unit (SBU) to the tail end of his transfer movement. To do so he was required to travel on certain streets in North Vancouver. When he encountered a red light at an intersection where he wanted to turn left, Conductor Pass made a right turn on the red light and, shortly thereafter, an abrupt illegal U-turn to redirect himself in the opposite direction. As he executed the U-turn his vehicle was struck by another on-coming vehicle. The collision caused the grievor's vehicle to tip onto its side, resulting in serious damage to both vehicles and personal injuries to a third party.

Mr. Pass had just over two years of service at the time of this unfortunate incident. Also unfortunately, he was the subject of previous discipline, having sustained a discharge, reduced to a fifteen day suspension, for a side-collision as a result of his violation on CROR 115 while working a yard assignment on March 30, 2009. His grievance in respect of that discipline was dismissed by this Office (**CROA&DR 3845**).

The incident here under examination is extremely serious. I am satisfied that it does, as the Company submits, call into question the grievor's judgement and his ability to be trusted to work safely. In a relatively short period of employment he has been involved in two serious incidents, the most recent being his second collision which involved personal injuries as well as extensive property damage. With regret, the Arbitrator is compelled to conclude that there are simply no mitigating factors which operate in favour of Conductor Pass, given his extremely limited service. In my view his questionable judgement and obvious disregard for safety did give the Company just cause to terminate his service. That result should not be disturbed.

For the foregoing reasons the grievance must be dismissed.

July 21, 2011

(signed) MICHEL G. PICHER
ARBITRATOR