

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

CASE NO. 4019

Heard in Edmonton, Wednesday, 15 June 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal on behalf of Conductor K. Hanuschuk of the assessment of the discipline of 40 demerit marks for violation of CROR General Rule A (iv), (v), (vi), CROR 105, CROR 106, CROR 113 (a), GOI Section 8-3.1 (b), (c), (f), (g), GOI Section 8-12.10-3, and concealment of a railway accident on August 19, 2010, while working as Conductor on the YLTS 30, 15:00 hours yard assignment in Winnipeg, and his resulting discharge for accumulation of demerit marks in excess of sixty, effective September 21, 2010.

COMPANY'S STATEMENT OF ISSUE:

On August 19, 2010, Mr. Hanuschuk was assigned as the Conductor on the YLTS 30, 15:00 hours yard assignment in Winnipeg, and was determined to have committed the above-noted rules infractions, and attempting to conceal an incident where a rail car was pushed over the stop blocks on a customer's track.

The Company conducted an investigation of the incident and determined that Conductor Hanuschuk had violated the rules noted, and had attempted to conceal the incident, and was deserving of discipline, which subsequently discharged him for accumulation of demerit marks.

The Union contends that the Company has assessed extreme discipline and discharged Mr. Hanuschuk, and that he ought to be reinstated and made whole.

The Company disagrees with the Union's contentions.

FOR THE COMPANY:

(SGD.) D. BRODIE
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

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| D. Brodie | – Manager, Labour Relations, Edmonton |
| K. Morris | – Sr. Manager, Labour Relations, Edmonton |
| D. Crossan | – Manager, Labour Relations, Prince George |
| D. Taylor | – Superintendent, BC South, Vancouver |
| B. Butterwick | – Assistant Superintendent, BC South, Vancouver |

There appeared on behalf of the Union:

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|----------------|-----------------------------------|
| M. A. Church | – Counsel, Toronto |
| B. R. Boechler | – General Chairman, Edmonton |
| R. A. Hackl | – Vice-General Chairman, Edmonton |
| R. Thompson | – Vice-General Chairman, Edmonton |
| W. Franco | – Vice-General Chairman, Edmonton |
| D. Saunders | – Local Chairman, Vancouver |

AWARD OF THE ARBITRATOR

Upon a review of the evidence the Arbitrator is compelled to conclude that the grievor did render himself liable to a substantial measure of discipline. It is not disputed that he was responsible for the operation of a yard assignment in Winnipeg when the leading axle and wheels of his consist of cars were pushed into and over stop blocks on an industrial storage track. That resulted from a hard coupling performed by a trainee who was then under the grievor's supervision while the grievor was himself located at the lead point of the cut of cars, where the mishap occurred.

While there was no apparent damage to the wheels or the car in question, what followed substantially aggravated the situation. It is common ground that the grievor was then under an obligation to report the incident prior to taking any further action. However, principally by reason of his own fear for disciplinary consequences and his job security, Mr. Hanuschuk proceeded to obtain tools from the industrial customer's plant, remove the stop blocks from the track, restore the lead car to a position outside them

and reinstall the stop blocks on the track, to then resume his assignment. Very simply, he acted so as to conceal the incident, something which he continued to do when a trainmaster subsequently attended at the site to inquire into what appeared to be a delay in the work of the grievor's assignment. Neither then nor at any other time did the grievor report to any member of management or traffic coordinator what had occurred.

Following a disciplinary investigation, Mr. Hanuschuk was found to have violated the rules cited in the statement of dispute which resulted in the issuing of forty demerits against him for the violation of those rules and "... concealment of a railway accident on August 19, 2010,"

If the evidence before the Arbitrator stood as it is recited above, given the grievor's deliberate attempt to conceal the incident, it is doubtful that his termination would be reversed. However, certain mitigating factors, some of them compelling, do emerge. Firstly, while the grievor is not a long service employee, having four years of service and being fifty years old at the time of the incident, in fact his service to the Company is considerably longer. He was first hired as an apprentice diesel mechanic in 1980 and worked fifteen years before being laid off in 1995. Shortly thereafter he was hired as a diesel mechanic by CP Rail and, after working thereafter for a period in private industry, returned to CN in June of 2006. In the result, he has worked many years in the industry and close to twenty years in the service of the Company.

Perhaps the most compelling mitigating element in this file, however, concerns the relative treatment of Mr. Hanuschuk and the other members of his crew, including his assistant conductor, Mr. Kyle Brown, and the conductor trainee, Mr. Jason Rousseau whose operation of the belt pack caused the incident. The undisputed fact is that Mr. Rousseau, who was then a probationary employee, was released from service but was later rehired by the Company where he is now gainfully employed. Mr. Brown, who appears to have been complicit in the concealment of the incident, was not investigated by the Company and received no discipline whatsoever. With respect, I find the discrepancy between the treatment of the grievor and his fellow workers to be of concern. While it may be true that the grievor seems to have been the instigator of the cover-up, it is also evident that the two other employees were equally complicit in failing to advise the Company of the jumping of the stop blocks by their movement, no less than the grievor himself. Bearing in mind the axiom that like conduct should attract like discipline, I find it particularly difficult to reconcile the fact that Mr. Brown, who was fully aware of what had occurred, received no disciplinary sanction whatever for his failure to report the incident while the grievor was discharged. When all of these factors are considered together, I am compelled to conclude that this is an appropriate case for a reduction of penalty, albeit to a serious level.

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 any wages and benefits lost. The forty demerits assessed against Mr. Hanuschuk shall be removed from his record and that record shall record a suspension

for the time between his discharge and his reinstatement for the events of August 19, 2010.

June 20, 2011

(signed) MICHEL G. PICHER
ARBITRATOR