

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

**CASE NO. 4023**

Heard in Montreal, Tuesday, 12 July 2011

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**UNITED STEELWORKERS UNION – LOCAL 2004**

**EX PARTE**

**DISPUTE:**

The discharge of John Welch.

**UNION'S STATEMENT OF ISSUE:**

Mr. Welch was assessed 35 demerits on April 12, 2011 for: "TOP and Separated track unit violations on March 22." Mr. Welch was subsequently discharged on April 12, 2011 for the accumulation of 70 demerit points.

There is no dispute that the grievor was operating as a separated track unit. The Union grieved that the Company assessed excessive discipline regarding the alleged violations and that the discharge of the grievor was unjust. The Union submits that Mr. Welch was aware of the contents of the TOP 5397 as he initialled the form. The Union contends Mr. Welch used proper radio procedures while working and that there were no incidents or injuries on that day. The Union contends that Mr. Welch is a focus employee whereby the Company is looking for any reason to assess major discipline.

The Company contends that the discipline and discharge is warranted.

**FOR THE UNION:**

**(SGD.) R. TOMPKINS**  
**CHIEF STEWARD GLD**

There appeared on behalf of the Company:

S. M. Blackmore	– Manager, Labour Relations, Edmonton
R. Bateman	– Director, Labour Relations
S. Grou	– Sr. Manager, Labour Relations, Montreal
D. James	– Sr. Manager Engineering

D. Morin – Regional Chief Engineer,

There appeared on behalf of the Union:

M. Piché – Staff Representative, Toronto  
P. D. Wright – President, Moncton  
P. Wills – Unit 33 Chair, Toronto  
R. Tompkins – Chief Steward, GLD,  
J. J. Welch – Grievor

### **AWARD OF THE ARBITRATOR**

Upon a review of the materials the Arbitrator is satisfied that the Company did have reason to impose some discipline upon the grievor. It seems that when he was approached by Senior Manager Engineering Dave James while he was operating a Brandt truck at Key Junction on the Bala Subdivision he was not then in possession of TOP 5397, a TOP had admittedly expired but had been in effect shortly prior. When Mr. James indicated to him the importance of having a copy of the TOP in his possession, as his truck was operating in a separated location from the remainder of his crew, he responded that if that is what the Company wanted he would then do it that way. However, at the subsequent disciplinary investigation he gave an entirely different response, stating that he had been in possession of the TOP and had burned it after its expiry.

I am compelled to agree with the Company's suggestion that the grievor was less than candid and forthcoming with respect to the facts. However, from a technical standpoint, he was not in fact found to be without a TOP in his possession at a time when he was under an obligation to have it. There is no dispute that the TOP about which he was being questioned had previously expired. The fact remains, however, that

his failure of candour did cause some difficulty to the Company and, standing alone, was deserving of some discipline.

There are mitigating factors to consider, however. The grievor is three years from his pension eligibility and has some thirty-four years of service. While his prior disciplinary record is not exemplary, I am satisfied on the whole that the substitution of a suspension for the assessment of thirty-five demerits for the events of March 22, 2011, and no order for compensation, will be sufficient to convey to the grievor the importance of being more careful in the observation of operating rules and being honest and forthright with his employer.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for his wages and benefits lost. The thirty-five demerits assessed against his record shall be removed, and the period between his termination and reinstatement shall be recorded as a suspension.

July 21, 2011

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