CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 4029

Heard in Montreal, Wednesday, 13 July 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Conductor J. Shlamp of Edmonton, Alberta, released from Company service effective July 20, 2010 after being deemed unsuitable for employment with CN during the probationary period.

JOINT STATEMENT OF ISSUE:

The grievor hired on with the Company on October 26, 2009 and qualified as a conductor on March 30, 2010. The Company released Mr. Shlamp from service for failure to meet an acceptable standard of performance during the period of his short service between October 26, 2009 and July 20, 2010.

The Company met with the grievor on July 20, 2010, providing him with a letter indicating that he was deemed unsuitable for employment as a Conductor for failing to demonstrate the acceptable standard of safety and performance in the workplace and in accordance with article 108A.10 of Agreement 4.3.

The Union contends that the last incident involving a sideswipe at ATL grain terminal was not the fault of the grievor but with the grievor's immediate supervisors who instructed the crew to work with only one working belt pack and pull the cars without the required working brakes.

The Company 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
D. VanCauwenbergh	– Director, Labour Relations, Toronto
K. Morris	– Sr. Manager, Labour Relations, Edmonton
D. Crossan	– Manager, Labour Relations, Prince George

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. R. Robbins	– General Chairman, CN Lines Central, Sarnia

AWARD OF THE ARBITRATOR

The record discloses that the Company decided to terminate the grievor's employment as a probationary employee. Mr. Shlamp was hired in October of 2009 and qualified as a conductor on March 30, 2010. On July 20, 2010 the Company deemed him unsuitable for employment as a conductor and released him from his position.

The record discloses that on June 16, 2010 the grievor was cautioned for failing to wear his safety glasses. Some three days later, on June 19, 2010 his crew was involved in a violation of CROR 114/115 while performing yard service. Because of inadequate point vigilance in the movement of their cars the grievor and his crew inadvertently collided with and coupled onto another yard movement, pushing it some twenty feet.

The final incident occurred on July 14, 2010. On that occasion the grievor was riding the point of a yard movement when a side swipe collision occurred. A review of the facts confirms that in fact the grievor made no effort to stop his movement until well after it had been in physical contact with another yard movement which was foul of the

area into which he was progressing. There was clearly a serious error committed by Mr. Shlamp, which would in the normal course have justified a serious degree of discipline.

As a probationary employee the grievor was governed by article 108A.10(d) of the collective agreement which provides as follows:

> (d) A Conductor (trainee) governed by this agreement will be considered as on probation until they have completed 90 tours of service. If found unsuitable prior to the completion of the training program or the 90 such tours, the Trainee will not be retained. The Trainee involved will be interviewed and explained the reason for termination. Such action will not be construed as discipline or dismissal but may be subject to appeal by the General Chairperson on behalf of such employee.

This Office has long recognized that a lower threshold operates with respect to a Company's decision to terminate a probationary employee, as compared with normal just cause requirements. That is reflected in the following passages from **CROA 1568**:

> It is common ground that the standard of proof required to establish just cause for the termination of a probationary employee is substantially lighter than for a permanent employee. The determination of "suitability" obviously leaves room for a substantial discretion on the part of the employer in deciding whether an employee should gain permanent employment status. … It is sufficient to say that, at a minimum, the Company's decision to terminate a probationary employee must not be arbitrary, discriminatory or in bad faith. It must be exercised for a valid business purpose, having regard to the requirements of the job and the performance of the individual in question.

The case at hand demonstrates that the grievor was involved in three separate safety or operating infractions in a relatively short period of time. Whatever the Arbitrator may think of the Company's decision, it is clearly one which was taken on the basis of a well-established factual record, and insofar as appears, without any element of arbitrariness, discrimination or bad faith. I am satisfied that the Company had good reason to take the decision which it did, and that that decision should not be reversed.

For the foregoing reasons the grievance must be dismissed.

July 21, 2011

(signed) MICHEL G. PICHER
ARBITRATOR