

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4050

Heard in Montreal, Thursday, 13 October 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Discharge of Conductor John Monteith of Vancouver, BC for violation of CROR 33, 125, 136, 142, 311 and 315, and violation of General Operating Instructions Section 8.3.1 which resulted in a collision between CN8847 and the patrol truck on February 6, 2011 while working as the conductor on L57051.

COMPANY'S STATEMENT OF ISSUE:

On February 6, 2011, the grievor was assigned as the conductor on train L57051-04 departing Lillooet, BC travelling south towards Vancouver, BC. Due to the terrain all train movements operating over this territory are preceded by a hy-rail patrol vehicle.

At approximately 09:30 train L57051-04 departed Squamish yard and re-entered OCS territory at mile 38 of the Squamish Subdivision. Conductor Monteith contacted Patrol Foreman McLean regarding authority for train L57051-04 to proceed on the Squamish Subdivision. Foreman McLean had provided train L57051 with authority to proceed up to mile 32. At approximately 09:50 train L57051-04 collided with hy-rail vehicle being operated by Patrol Foreman McLean at mile 30.5 on the Squamish Subdivision.

Subsequent to the formal investigation, the grievor was deemed culpable for the collision between CN8847 and the patrol truck on February 6, 2011 and was discharged.

The Union contends that the discipline was excessive, that it should be reduced and the grievor reinstated. In addition, the Union contends that the investigation was not conducted in a fair and impartial manner.

The Company disagrees with the Union's contentions.

FOR THE COMPANY:

(SGD.) D. CROSSAN
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

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| D. Crossan | – Manager, Labour Relations, Edmonton |
| K. Morris | – Sr. Manager, Labour Relations, Edmonton |
| D. Brodie | – Manager, Labour Relations, Edmonton |
| R. Robinson | – Engine Service Officer, Western Canada, Edmonton |
| K. Smolynec | – Sr. Manager, Occupation Health, Edmonton |

There appeared on behalf of the Union:

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|----------------|------------------------------------|
| J. Holliday | – General Chairman, Vancouver |
| W. Martin | – Vice-General Chairman, Vancouver |
| B. R. Boechler | – General Chairman, Edmonton |
| R. A. Hackl | – Vice-General Chairman, Edmonton |
| J. D. Monteith | – Grievor |

AWARD OF THE ARBITRATOR

There can be no doubt but that the grievor, along with his locomotive engineer, was responsible for the violation of a number of operating rules on train L57051-04 on the Squamish Subdivision on February 6, 2011. As the road in the area he was travelling is winding and mountainous, in accordance with normal practice the grievor's train was preceded by a patrol foreman driving a hy-rail vehicle. It was the grievor's responsibility, as well as that of his locomotive engineer, to ensure that the patrol foreman was made aware of the position of their train. On two separate occasions when the rules placed an obligation on the grievor and his locomotive engineer to broadcast their position, they failed to do so. Most importantly, they failed to pay attention to the track occupancy limits which Patrol Foreman Troy McLean had established for them. Foreman McLean had given the grievor and his locomotive engineer clearance only to Mile 32. In fact the two operating employees inadvertently lost track of their location and the track occupancy limits to which they were restricted, and their train entered the territory beyond Mile 32, travelling a distance of approximately 1/2 mile before

encountering the stopped vehicle of Patrol Foreman McLean. Having put the train into an emergency brake application, it travelled some 400 feet and struck the rear of Foreman McLean's vehicle, propelling it forward. Fortunately there were no injuries or fatalities.

There can be no doubt but that this was a serious rules' violation deserving of the most serious of discipline. The evidence before the Arbitrator confirms that the train was travelling slightly overspeed, that the crew had not properly copied and repeated their OCS clearance, that the crew members failed to remind themselves of their operating restrictions, that they failed to radio broadcast their location on two separate occasions when they were obliged to do so, that they improperly entered the TOP limits of Foreman McLean and that they failed to make emergency broadcasts, both when they applied the emergency brake of their train and after the collision with the hy-rail vehicle. It is effectively unchallenged that among the rules violated were CROR 33, 125, 136, 142, 311, 315 and GOI 8.3.1.

The Union raises a preliminary issue, arguing that the Company failed to provide a fair and impartial investigation prior to assessing discipline against Mr. Monteith. Among the objections made is what the Union qualifies as the inquisitorial tone of the investigating officer's questions and the fact that the Union was denied a copy of a video download from the locomotive which it was shown during the investigation. For reasons more extensively explained in the award relating the discharge of Locomotive Engineer Errington (**CROA&DR 4052**), I am satisfied that the Company did not violate

the standard of a fair and impartial investigation in its handling of the disciplinary inquiry of the grievor.

The fundamental question to be addressed is the appropriate measure of discipline in this case. There can be no doubt, as stated above, that the rules' infractions and the collision which occurred were extremely grave and deserving of a high degree of discipline. In the instant case, however, there is a powerful mitigating factor to be considered. At the time of this incident the grievor had completed some thirty-one years of service. In all of those years he had never once been disciplined for the violation of any operating rule. He did receive minor discipline on three occasions over that period of years, each relating to attendance problems. However, from the standpoint of safety and respect for operating rules, over a period of thirty-one years of service the grievor effectively recorded a perfect, exemplary record. In the Arbitrator's view it is not inappropriate to give considerable weight to that fact in determining the measure of discipline that should fit in the instant case. Given his extraordinary record, I am satisfied that an extensive suspension, short of discharge, will serve to communicate to Mr. Monteith the importance of observing all operating rules, and in particular of respecting radio broadcast requirements to protect any patrol vehicle and patrol foreman working in tandem with his train.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, subject to the conditions described in

CROA&DR 4051, without compensation for wages and benefits lost and without loss of seniority.

October 18, 2011

(signed) MICHEL G. PICHER
ARBITRATOR