

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

CASE NO. 4053

Heard in Calgary, Tuesday, 8 November 2011

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal the twenty (20) demerits issued to Locomotive Engineer R. Harmer of Winnipeg, Manitoba.

JOINT STATEMENT OF ISSUE:

On October 6, 2010, Locomotive Engineer Harmer was issued twenty (20) demerits as explained on the Company's form 104 for "failure to ensure speed requirements were met as indicated by Winnipeg Terminal DOB for the LaRiviere Sub between mileage 4.7 to 12 resulting in violation of CROR rule 33 and CROR Rule 106 on August 16th, 17th and 18th, 2010 on the LaRiviere Sub, Winnipeg, Manitoba."

The Union contends that Locomotive Engineer Harmer was not afforded a fair and impartial investigation into this matter due to excessive and unwarranted delay by the Company. The Union further asserts that the Company has not established any facts to meet their burden of proof to issue discipline in this case.

The Company disagrees and declines the Union's request.

FOR THE UNION:

(SGD.) D. R. ABLE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. BURKE
FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Burke	– Labour Relations Officer, Calgary
D. Freeborn	– Manager, Labour Relations, Calgary
K. Wachs	– Manager, Operating Practices, Calgary
S. Baker	– Superintendent, Winnipeg
M. Thompson	– Labour Relations Officer, Calgary

There appeared on behalf of the Union:

G. Edwards	– Sr. Vice-General Chairman, Revelstoke
D. Able	– General Chairman, Calgary

H, Maskoski	– Vice-General Chairman, Winnipeg
Wm. Pitts	– Vice-General Chairman, Moose Jaw
R. Purtil	– Local Chairman, Moose Jaw
K. Stewart	– Local Chairman, Cranbrook

AWARD OF THE ARBITRATOR

The material before me confirms that on August 16, 17 and 18, 2010 the grievor worked Yard Assignment P122 on the La Rivière Subdivision. On that territory he was bound to respect a 10 m.p.h. speed restriction. Event recorder downloads taken by Yard Manager Ross Harrison on August 18, 2010 indicated that on all three tours of duty Locomotive Engineer Harmer operated in excess of that speed, reaching speeds as high as 15 m.p.h. The Company asserts that some two days later, on August 20, 2010 Mr. Baker informed the grievor of the results of the Qtron review. Some three weeks later the Company conducted a disciplinary investigation which resulted in the assessment of twenty demerits against the grievor for his failure to respect the speed restrictions on the three days in question.

The Union challenges the discipline on a number of grounds. Bearing in mind that the jurisdiction of the Arbitrator is confined by the Joint Statement of Issue, the first ground of challenge is that the grievor was denied a fair and impartial investigation by reason of what the Union characterizes as an excessive delay on the part of the Company in conducting the investigation. The Union also alleges that the data and facts gathered by the Company do not confirm that there was a violation of speed restrictions by the grievor on the days in question.

With respect to the issue of delay the Arbitrator is not persuaded by the Union's position. While it is true that the grievor did not have his disciplinary investigation conducted until September 16, 2010, concerning the events of August 16, 17 and 18, the unchallenged representation of the Company, supported by the presence of Superintendent Steve Baker at the arbitration hearing, is that Mr. Baker had a conversation with the grievor on or about August 20th concerning his alleged overspeed on the days in question. The grievor was not present at the hearing to contradict that account of events by Mr. Baker. In the result, I am satisfied that the Company did bring to the grievor's attention the result of the Qtron download at a point in time reasonably fresh from the events, and that Mr. Harmer was not deprived of a reasonable ability to recollect what had occurred on the tours of duty in question.

The principal thrust of the Union's case was to attack the method by which Yard Manager Harrison conducted the measurement of the locomotive wheel and the download of the Qtron, and in particular the method by which the speed and location of the grievor's train movement was identified on each of the days in question. The Union's representative seems to take particular exception to the fact that the actual diameter of the locomotive wheel was different from the wheel size programmed into the locomotive's speedometer unit, an apparent discrepancy of .475 inches.

Having reviewed the explanation for the two figures used, with the adjusted figure apparently being utilized to recreate the speed which would have been displayed on the grievor's speedometer, the Arbitrator can find no proven irregularity to sustain the

position of the Union that the Qtron data was improperly manipulated or withheld from the grievor and his Union representative in a way which would have deprived him of a fair and impartial investigation. In my view the evidence presented by the Company, explained by witnesses familiar with the Qtron download process is sufficient to establish, on a *prima facie* basis, that the data did confirm that the grievor was travelling at an excessive speed at the times and places identified. While there may have been some uncertainty or confusion in the mind of the Union representatives interpreting that data, in my view it would have required expert testimony on the part of the Union to rebut the material presented by the Company, testimony which was not forthcoming. On balance, therefore, I am compelled to accept the evidence presented by the Company as confirming that the grievor did travel at an excessive rate of speed on all three days in question. Nor am I impressed by suggestions made by the Union's representatives to the effect that the Company has, for example, failed to adduce documentary evidence to confirm that in fact the grievor was assigned to the locomotive from which the download was taken. That was not a position asserted by the Union during the grievor's disciplinary investigation and, in my view, which can fairly be asserted only at the stage of the arbitration.

On the whole of the material before me, therefore, I am satisfied, on the balance of probabilities, that the grievor did exceed the speed restrictions on the La Rivière Subdivision on all three days for which locomotive data downloads were obtained. I am also satisfied that the assessment of twenty demerits was well within the appropriate range of discipline for such an infraction.

For the foregoing reasons the grievance must be dismissed.

November 14, 2011

(signed) MICHEL G. PICHER
ARBITRATOR