

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

CASE NO. 4060

Heard in Calgary, Thursday, 10 November 2011

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

DISPUTE:

The dismissal of R. Sjodin.

JOINT STATEMENT OF ISSUE:

By way of Form 104 dated April 6, 2011, the grievor, Mr. R. Sjodin, was dismissed from Company service for his involvement in a collision on March 22, 2011. A grievance was filed.

The Union contends that (1) The grievor had more than thirty years of Company service. (2) Mitigating factors existed that should have served to reduce the discipline assessed. (3) The dismissal of the grievor was unwarranted in the circumstances.

The Union requests that the grievor be reinstated into Company service immediately without loss of seniority.

The Company denies the Union's contentions and declines the Union's request.

FOR THE UNION:

(SGD.) WM. BREHL
PRESIDENT

FOR THE COMPANY:

(SGD.) M. CHERNENKOFF
ASSISTANT LABOUR RELATIONS OFFICER

There appeared on behalf of the Company:

W. Scheuerman	– Labour Relations Officer, Calgary
M. Goldsmith	– Manager, Labour Relations, Calgary
V. White	– Labour Relations Officer, Calgary
M. Chernenkoff	– Assistant Labour Relations Officer, Calgary

There appeared on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. Brown	– Counsel, Calgary

A. R. Terry

– Vice-President, Lethbridge

AWARD OF THE ARBITRATOR

On March 22, 2011 the grievor came close to causing a workplace fatality. He was then operating a Brandt Road Rail truck pulling an OTM Tracker from the Nelson Yard to Creston, B.C. on the Nelson Subdivision. Between Mile 117 and Mile 67.2 the grievor was subject to a Track Occupancy Permit (TOP) held in accordance with the overlapping authorities of an S&C Maintainer Foreman as well as a Track Maintenance Foreman. He was then travelling in rainy conditions over territory where his speed was not to exceed 10 m.p.h.

After he entered the TOP territory Mr. Sjodin made no attempt to contact either of the working crews whom he knew, or reasonably should have known, were occupying the track ahead of him. It does not appear disputed that notwithstanding the posted speed of 10 m.p.h. at Mile 94.1, he operated his Brandt Truck at 20 m.p.h. As he rounded a curve at Mile 93.6 his truck encountered two S&C vehicles working at that location. The first vehicle was an S&C bucket truck with employee Darryl Anderson then in the bucket some twenty feet in the air. The grievor's truck slammed into the bucket truck, causing Mr. Anderson to be thrown in the air, striking the side of the Brandt truck as he landed and bouncing into the adjacent ditch. Mr. Anderson suffered serious injuries, including a broken hip. His injuries required him to be medi-vacced by helicopter and to be hospitalized for a period of two weeks. He remained absent from work for a total of three months. The S&C truck which was struck by the grievor's vehicle was pushed some 330 feet down the track while the truck stationed beyond it,

an S&C maintainer truck, was propelled some 780 feet in the same direction. All three vehicles were totally destroyed, resulting in equipment damages in excess of \$1m. Following the incident the grievor was tested for drugs and alcohol and returned a positive test for cocaine.

This case is particularly unfortunate, as Mr. Sjodin had thirty years of service with the Company at the time of the incident in question. Following a disciplinary investigation the Company terminated his services. As there is no suggestion on the part of the Union that some discipline was not appropriate, the issue is whether the grievor's discharge was justified, or whether some lesser degree of penalty would be appropriate.

In considering that question the Arbitrator has substantial difficulty with the grievor's prior disciplinary record. That record contains a number of operating rule violations, including at least one prior collision which caused injury to another employee. On August 23, 2004 he fell asleep while operating a ballast regulator which caused his machine to collide into another piece of equipment resulting in injury to another employee at Fairmont, on the Windermere Subdivision. Some two years earlier, on April 5, 2002, Mr. Sjodin was involved in a collision between a dump truck which he was operating and grade-all machine on the Shuswap Subdivision. More recently, on June 7, 2010 because of overspeed in the operation of his Brandt truck the grievor ran through a switch at Chaumoux on the Thompson Subdivision.

The grievor does not have an enviable record, particularly as relates to the operation of heavy equipment in a safety sensitive environment. While the Arbitrator appreciates that the Company did not conclude that he was under the influence of cocaine at the time of the near fatal collision which occurred on March 22, 2011, accepting his explanation that he had used cocaine recreationally on the prior weekend, the fact remains that Mr. Sjodin followed a course of behaviour in the operation of his Brandt truck at excessive speed, in rainy conditions within the limits of his TOP in a manner that can only be described as grossly negligent. In the circumstances, given the prior incidents and similar misconduct in his record, I am compelled to accept the submission of the Company that notwithstanding the length of his service, the grievor has justified the Company's conclusion that he cannot be trusted to work in a safety sensitive environment. Nor am I persuaded that, given the application of progressive discipline given to him over the years, that this is an appropriate case for substituting a demotion for the termination of his services.

For all of the foregoing reasons the grievance must be dismissed.

November 24, 2011

(signed) MICHEL G. PICHER
ARBITRATOR