

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4063**

Heard in Montreal, Tuesday, 13 December 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal of the assessment of 30 demerit marks to Employee F of Winnipeg, Manitoba, for “your responsibility for the derailment in Symington Yard in Winnipeg, Manitoba on the evening of January 25, 2010.”

COMPANY STATEMENT OF ISSUE

On January 25, 2010, while the grievor worked his 15:00 Hump Traffic Coordinator assignment in Symington Yard in Winnipeg, Manitoba, he was responsible for a derailment accident involving two dangerous commodity tank cars.

The grievor attended an employee investigation, and was ultimately assessed discipline in the form of 30 demerit marks for his responsibility for the accident.

The Union appealed the discipline assessed to the grievor and requested that it be mitigated to a lesser degree.

The Company disagrees with the Union’s contentions.

FOR THE COMPANY:

(SGD.) D. BRODIE

FOR: VICE-PRESIDENT, HUMAN RESOURCES

There appeared on behalf of the Company:

D. Brodie	– Manager, Labour Relations, Edmonton
D. Van Cauwenbergh	– Director, Labour Relations, Toronto
K. Smolynech	– Sr. Manager, OHS, Montreal

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Toronto
R. A. Hackl	– Vice-General Chairman, Edmonton
B. R. Boechler	– General Chairman, Edmonton
B. Willows	– General Chairman, Edmonton
J. Robbins	– General Chairman, Sarnia
Employee F	– Grievor

AWARD OF THE ARBITRATOR

There is no dispute with respect to the seriousness of the error of judgement committed by Employee F. While working as Traffic Coordinator on January 25, 2010, the grievor authorized the movement of cars into an area of the hump yard in Symington Yard in Winnipeg which had been placed under track protection as S&C Department maintainers were working to repair problems with cross-over switches. The ensuing movement, up the B side of the hump, resulted in the derailment of two empty dangerous commodity gasoline cars. The resulting damage also destroyed eighty feet of rail, two power switch motors and an engineering department truck, for an estimated cost of some \$16,000.

There is no doubt but that the grievor was solely responsible for what occurred. Very simply, he directed traffic into an area which he knew was under repair and was protected against any such yard movements.

Following the incident the grievor was directed to undergo drug and alcohol testing. As a result of that testing he was found to have tested positive for cocaine. Given the grievor's own admission and the level of the readings taken, there appears to be no dispute but that he was impaired by cocaine while at work on that occasion.

Following a disciplinary investigation the Company assessed thirty demerits against the grievor;

The Union objects to the fact that Assistant Superintendent Greg Wolnairski interviewed Hump Foreman A. Morosky to obtain from him a narrative statement which the Supervisor in fact typed up for Mr. Morosky to sign. The Union submits that for the Assistant Superintendent to have proceeded in that way violates the Company's obligation to conduct a fair and impartial investigation. The Arbitrator cannot sustain that submission. Firstly, the issue of a fair and impartial investigation was not raised by the Union at any time prior to the hearing and indeed is not part of any statement of issue before the Arbitrator. It is common ground that the issues identified within that statement circumscribe the Arbitrator's jurisdiction. Additionally, if it were necessary to rule upon it, I am not satisfied that what occurred would be a violation of the provisions of the collective agreement which require a fair and impartial investigation. It does not appear disputed that the narrative statement obtained by the Assistant Superintendent was filed in evidence at the disciplinary investigation. The Union had every opportunity to ask for the Hump Foreman to be produced to answer its questions, a right which it apparently chose not to exercise. There is nothing on the face of the record which, in my view, discloses a failure of the Company's obligation to conduct a fair and impartial investigation.

In the Arbitrator's view the assessment of thirty demerits should not be disturbed. While the Arbitrator appreciates the argument made by the Union, stressing that the

grievor's length of service and clear prior disciplinary record should mitigate against the penalty assessed, I am not persuaded. In my view in the case at hand the actions of the grievor created a condition of extreme peril, and might well have resulted in a fatality. Those facts, combined with the grievor's decision to work in a highly safety-sensitive environment while impaired by the consumption of cocaine raises the seriousness of this case beyond those earlier cases cited by the Union and argued to be comparable.

In my view the assessment of thirty demerits was within the appropriate range of discipline and should not be disturbed.

The grievance is therefore dismissed.

December 19, 2011

(signed) MICHEL G. PICHER
ARBITRATOR