

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4065**

Heard in Montreal Wednesday, 14 December 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge assessed to Conductor C. Logan for accumulation of demerits following the assessment of 45 demerits for failing to comply with CROA rule 112 and GLD Bulletin 1015 dated February 9, 2010 (riding rail cars inside building structures) while working as the helper on assignment L50131-21 on July 21, 2010.

JOINT STATEMENT OF ISSUE:

On August 2, 2010, Conductor Logan was required to attend a formal investigation in connection with the circumstances surrounding the alleged failure to comply with CROR rule 112 and GLD Bulletin 1015 dated February 9, 2010.

Subsequent to these investigations, the Company issued a discipline form 780 assessing Mr. Logan with 45 demerits which resulting in discharge for accumulation of demerits effective August 3, 2010.

The Union is also grieving the following discipline: 15 demerits for delay to assignment on September 7th, 2008. 15 demerits for delay to assignment on August 30th, 2008. The 30 demerits were adjusted to a suspension and Mr. Logan was returned to work; 25 demerits for failure to comply with Company Attendance Management Standards, 12 November to 24 December 2007. 20 demerits for failure to comply with Company Attendance Management Standards 15 April 2007. 10 demerits for failure to comply with CN Attendance Management Standards on December 24th and 30th.

Mr. Logan's record stood at 100 active demerits at the time of this second discharge for accumulation.

The Union contends that in each of the cases noted above, the discipline assessed is unjustified, unwarranted and excessive.

The Company deems the discipline assessed to be appropriate, warranted and progressive in each case and that no violation has occurred.

FOR THE UNION:
(SGD.) J. ROBBINS
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.) B. HOGAN
FOR: SR. VICE-PRESIDENT, OPERATIONS

There appeared on behalf of the Company:

S. Fusco	– Manager, Labour Relations, Toronto
D. Gagné	– Sr. Manager, Labour Relations, Montreal
A. Daigle	– Manager, Labour Relations, Montreal
D. Larouche	– Manager, Labour Relations, Montreal
L. Karn	– Trainmaster, MacMillan Yard

There appeared on behalf of the Union:

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

AWARD OF THE ARBITRATOR

This award concerns a series of six separate heads of discipline assessed against the grievor between April of 2007 and his discharge on August 3, 2010 following an incident on July 21, 2010.

The first head of discipline to be examined in this matter concerns the assessment of twenty demerits for the grievor having missed a call to work in GO Train service on April 15, 2007. While his prior record discloses previous assessments of demerits on two occasions, as well as two written reprimands, none of that discipline involved failing to respond to a call. In the Arbitrator's view the assessment of ten

demerits would therefore have been a more appropriate measure of discipline for that incident, and it is so ordered.

Twenty-five demerits were assessed Mr. Logan on April 15, 2007 for his failure to have complied with Company Attendance Management Standards in the period November 12 to December 25, 2007. In fact that discipline related to three separate events. During the course of the hearing the Company indicated that it was waiving the events of November 11 and 12 as a head of discipline, thereby leaving two incidents to justify the assessment of twenty-five demerits. Upon a review of the facts in relation to that discipline, I am satisfied that some reduction is in order, as the impact of one incident has been eliminated. On balance, I am satisfied that the grievor was nevertheless deserving of discipline, particularly having regard to his having booked rest, apparently for a second time, on Christmas Eve of 2007, thereby missing the second half of his split shift in GO Train service at an obviously critical time. I therefore substitute fifteen demerits for the twenty-five demerits originally assessed.

The Company subsequently assessed fifteen demerits against the grievor for a delay in operations on August 30, 2008. It similarly assessed an additional fifteen demerits for a separate delay attributed to him on September 7, 2008. The assessment of those thirty demerits, coupled with the previous forty-five demerits on his record resulted in his discharge. However, the record reveals that after he had been out of work for some 479 days, the Company agreed to reinstate him into employment,

substituting the corresponding suspension for the assessment of thirty demerits for the two incidents of delays of assignment on August 30 and September 7, 2008.

I am satisfied that the grievor was deserving of discipline on both of those occasions. On August 30 he improperly overstayed his lunch period at MacMillan Yard when he knew, or reasonably should have known, he should return to his yard assignment, even though switch lists had not yet been provided, as the crew had in fact been working previously without switch lists. Secondly, on September 7, 2008, while performing work at Smurfit Stone the grievor engaged in work which was not in fact assigned, thereby causing a delay to operations. I am satisfied that with respect to both incidents the assessment of fifteen demerits was appropriate and should not be disturbed.

I am not satisfied that there was discrimination visited upon the grievor with respect to the incident at the Smurfit Stone plant of September 7, 2008 or with respect to the treatment of the grievor's locomotive engineer in relation to the delay of August 30, 2008, when that employee obviously remained available to perform work.

The issue then becomes the treatment of the period of suspension of 479 days, as the Company removed the total of thirty demerits from the grievor's record, substituting the suspension. I am satisfied that a suspension was appropriate, but that given the adjustment in the prior discipline assessed against the grievor, that a shorter suspension would have been justified. With respect to that period of 479 days,

therefore, the Arbitrator directs that the grievor be compensation for wages and benefits lost for one-half the period in question.

In the result, having regard to the rulings made above, the grievor would have had an outstanding record of twenty-five demerits at the time of the culminating incident which resulted in his final discharge.

The final incident concerned the grievor having ridden the side of a rail car into the BWW building, on the premises of a customer adjacent to MacMillan Yard on July 21, 2010. I am satisfied that on that occasion the grievor did violate CROR rule 112 and GLD Bulletin 1015 as alleged by the Company. He then knew, or reasonably should have known from bulletins, that it was forbidden to ride on the side of a car inside a customer's building. I am satisfied that the grievor also failed to conduct a push-pull test following the spotting of a cut of cars in respect of which he had applied a hand brake. Given Mr. Logan's prior record, it was not inappropriate for the Company to assess a serious level of discipline at that point. I am, however, satisfied that it is appropriate to substitute a lengthy suspension for the forty-five demerits which were then assessed, to give to the grievor a last chance to demonstrate that he can work safely and in accordance with operating rules. The grievance in respect of the assessment of forty-five demerits is therefore allowed, in part. The Arbitrator directs that the demerits be removed from the grievor's record and that a period representing the time between his termination and his reinstatement be substituted as a suspension instead. In the result, Mr. Logan is to be returned to work forthwith, without compensation for any wages and

benefits lost save as relates to one-half the period of suspension described above, with his disciplinary record to stand at twenty-five demerits.

December 19, 2011

(signed) MICHEL G. PICHER
ARBITRATOR