# CANADIAN RAILWAY OFFICE OF ARBITRATION

# & DISPUTE RESOLUTION

# CASE NO. 4081

Heard in Montreal, Thursday, 12 January 2012

Concerning

**BOMBARDIER TRANSPORTATION CANADA INC.**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

2-day suspension assessed to T. Steenkist.

**JOINT STATEMENT OF ISSUE:**

On May 11, 2011, the grievor was involved in an incident in connection with a fire in the workplace. Following an investigation and statement held on August 19, 2011, the Company issued a letter of discipline dated September 6, 2011.

It is the Union's position that the investigation in this matter was not conducted in a fair and impartial manner as per the requirements of the collective agreement. For this reason the Union contends that the discipline is null and void and the discipline should be removed from the grievor's record and he be made whole.

The Union further contends that there is no cause for discipline in the circumstances or, in the alternative, that the penalty is excessive.

The Company disagrees and denies the Union's request.

| **FOR THE UNION:** | **FOR THE COMPANY:** |
|---|---|
| **(SGD.) G. MACPHERSON** | **(SGD.) A. BROWN** |
| **GENERAL CHAIRMAN** | **MANAGER, LABOUR RELATIONS** |

There appeared on behalf of the Company:

| | |
|---|---|
| M. Horvat | – Counsel, Toronto |
| A. Brown | – Manager, Human Resources, Toronto |
| D. Mitchell | – General Manager Operations, Toronto |

There appeared on behalf of the Union:

| | |
|---|---|
| M. Church | – Counsel, Toronto |
| G. MacPherson | – General Chairman, Toronto |

## AWARD OF THE ARBITRATOR

As can be seen from the joint statement, the grievor was assessed a two day suspension for having left the premises when he was responsible for an engine under load which in fact caught fire during his brief absence. While it is common ground that the grievor returned to discover the fire and exhibited some courage in putting it out, the Company takes the position that Mr. Steenkist must bear some responsibility for the extent of the fire which, it is not disputed, caused considerable damage to the locomotive in question, estimated at some $250,000.

The Union raises preliminary objections with respect to the manner in which the Company conducted its investigation. Firstly, it notes that the Company waited more than three months, or approximately 100 days, before conducting the investigation of the incident. It submits that that delay, of itself, violates the standard of a fair and impartial investigation enshrined in article 9 of the collective agreement and in particular in article 9.1(j).

Secondly, the Union stresses that an investigatory statement was taken from another employee, Mr. Amal Athauda. It appears that that statement was taken on August 19, 2011, the same day as the statement of the grievor. The statement of a third employee, Electrical Technician Anthony Ottley was taken five days later, on August 24, 2011. The grievor received no notice of Mr. Athauda's statement.

Article 9.1(e) of the collective agreement deals with the information which must be provided to an employee who is notified of the requirement to attend at a disciplinary investigation. It reads as follows:

> 9.1 (e) The notification shall be accompanied with all available evidence, including a list of any witnesses or other employees, the date, time, place and subject matter of their investigation, whose evidence may have a bearing on the employee's responsibility.

Article 9.1(i) is also relevant. It reads as follows:

> 9.1 (i) If the employee is involved with responsibility in a disciplinary offence, they shall be afforded the right on request for themselves or a representative of the Union or both, to be present during the investigation of any witness whose evidence may have a bearing on the employee's responsibility, to offer rebuttal thereto and to receive a copy of the statement of such witness.

As noted above, it is not disputed that the grievor was never notified of the Company's investigation of employee Amal Athauda. A review of that investigation confirms that Mr. Athauda had some involvement with a fuel leak on the locomotive unit and by his account, he notified the grievor of the status of the fuel lines.

It is well established in the jurisprudence of this Office that the failure to notify an employee of the evidence of another individual which may have a bearing on his or her responsibility, during the overall investigation of an incident, constitutes a failure to meet the standard of a fair and impartial investigation and vitiates any discipline which might result. In this regard general reference may be made to **CROA 363, 377, 491, 624, 696, 987, 1241, 1420, 2280, 3322** and **3420**. I am compelled to the conclusion that the Company failed to meet the standard required by article 9 of the collective agreement and reflected in the jurisprudence noted. The grievor was entitled to know, in advance,

of the investigation of his fellow employee, whether or not that individual's statement might be positive or negative towards him, to be present at that investigation and to be provided a copy of the employee's statement. Regrettably, it is clear that the grievor was given no notification of Mr. Athauda's investigation nor was he given a copy of Mr. Athauda's statement prior to the commencement of his own investigation.

On the foregoing basis the discipline must be declared to be void *ab initio*, as the Company did fail to provide a fair and impartial investigation within the standards contemplated under article 9.1 of the collective agreement. Given that determination it is unnecessary for me to consider the alternative argument as to whether the 100 day delay was of itself outside the standard of a fair and impartial investigation.

For the foregoing reasons the grievance is allowed. The Arbitrator directs that the suspension of Mr. Steenkist be stricken from his record and that he be compensated for wages and benefits lost.

January 16, 2012 **(signed) MICHEL G. PICHER**

ARBITRATOR