

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4082**

Heard in Montreal, Thursday, 12 January 2012

Concerning

BOMBARDIER TRANSPORTATION CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

1 day suspension assessed A. Ottley.

JOINT STATEMENT OF ISSUE:

On May 11, 2011 the grievor was involved in an incident in connection with a fire while at work. Following an investigation and statement held on August 24, 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:
(SGD.) G. MACPHERSON
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.) A. BROWN
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

The facts in relation to this grievance are related in **CROA&DR 4081**. The grievor, Electrical Technician Anthony Ottley, was performing electrical work in the cab of a locomotive on May 11, 2011 when the locomotive which was then under a load output, caught fire. During the disciplinary investigation the grievor took the position that the person primarily responsible for the load process, Mechanical Technician Tim Steenkist, did not specifically ask him to monitor the engine while Mr. Steenkist absented himself briefly. In the ultimate, however, the Company concluded that there was a degree of responsibility on the part of Mr. Ottley.

The record before the Arbitrator confirms that the Company failed to notify Mr. Ottley of the investigation of another employee, Mr. Amal Athauda and did not provide him with a copy of Mr. Athauda's statement. Nor, it appears, did the Company provide Mr. Ottley with a copy of the statement made by Mr. Steenkist.

For the reasons related in **CROA&DR 4081**, those errors on the part of the Company go to the heart of its obligation to provide a fair and impartial investigation, and expressly violated the provisions of article 9.1 (e) and 9.1 (i) of the collective

agreement. For these reasons the Arbitrator is compelled to declare the discipline assessed against as void *ab initio*.

The grievance is therefore allowed. The Arbitrator directs the Company to expunge from the grievor's record any reference to the one day suspension which was assessed against him and to compensate him for his lost wages and benefits accordingly.

January 16, 2012

(signed) MICHEL G. PICHER
ARBITRATOR