

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4084**

Heard in Montreal, Thursday, 12 January 2012

Concerning

BOMBARDIER TRANSPORTATION CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The termination of Qualified Commuter Train Operator, F. Hederich, on November 18, 2010 for alleged violations of Rules 12-121 (a), (b) and (c) and GOI Section 8, Item 12.2 on October 15, 2010 and for alleged violations of CROR Rules 33, 102, 106, 13 and General Rule A(iii) and alleged violations of GOI Section 8, Item 12.1 on October 17, 2010.

JOINT STATEMENT OF ISSUE:

On October 15, 2010, Mr. Hederich was the Qualified Commuter Train Operator (QCTO) on GO 911 and GO 916. ESO Bob Wideman was present performing a qualification check ride for a CTO in training. Following the tour of duty on October 15, 2010 Mr. Wideman prepared a memo documenting several alleged performance issues involving Mr. Hederich.

On October 17, 2010, Mr. Hederich was the Qualified Commuter Train Operator on GO 905 which overshot the Port Credit GO station.

Investigations were held on October 22 and November 4, 2010 for the above matters. Following the investigations Bombardier terminated Mr. Hederich's employment as a result of the foregoing incidents and on the basis of previous investigations.

The Union objected to Mr. Hederich's termination alleging that the penalty of dismissal was excessive and that there were significant mitigating factors including health issues which contributed to the incidents. The Union requested Bombardier reinstate Mr. Hederich into employment.

The Company has denied 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
F. Hederich	– Grievor

AWARD OF THE ARBITRATOR

The grievor is an individual who can be justly proud of having a long and distinguished career in railroading, particularly in freight service with CN where he was employed for some thirty-four years. The events in relation to this grievance, however, call into question the extent to which the grievor has adjusted to the different demands of operating high speed commuter trains in GO Train service.

The record discloses that in January of 2010 the grievor was issued a three day suspension for rules violations which occurred during his operation of GO trains on Friday, January 15, 2010 and Sunday, January 17, 2010. In addition to a further written warning issued to him in July of 2010 Mr. Hederich also received a four day suspension in September of 2010 for further rules violations which, in part, resulted in his train being improperly spotted at Aldershot and consequently delayed.

The culminating incident, which resulted in the grievor's discharge, occurred on October 17, 2010 when the grievor was the QCTO operating GO 905 which overshot the Port Credit GO Station by some two car lengths. Upon a review of the evidence I am satisfied that the grievor engaged in grievously erroneous train handling on that

occasion. It is clear from the material before me that as his train approached the Port Credit station the grievor was operating at a substantially excessive speed to allow for a proper slowing and stopping of his train at the station platform. As a result of his apparent inattention to the brake pipe pressure exhibited on the gauges of his locomotive, Locomotive Engineer Hederich effectively lost the ability to place his train into an emergency brake application at a point when it was approaching the station and moving at a speed in excess of 60 m.p.h. In fact, by reason of the grievor's misapplication of the brake mechanism, the train placed itself into an emergency brake status, albeit that had no practical additional effect in respect of slowing or stopping his train.

A number of points are raised in the grievor's defence. Firstly, it is suggested that he may not have been aware at the time that his train in fact went into an emergency brake application, as the amount of air in the system would have been so low as little or no exhaust sound was generated. While technically that may explain why the grievor did not make any broadcast of the emergency brake application, or report it to anyone, it does little to commend his awareness of the state of the braking system of his train and of all of the circumstances under which he was operating as he approached a commuter train station at high speed.

The second element raised in the grievor's defence is that his judgement and faculties may have been impaired by the secondary effects of the drug Champix, a prescription drug which he was apparently taking to assist him in quitting smoking. The

Union submits before the Arbitrator a letter dated August 22, 2011 from Psychiatrist Daria Racichovschi which expresses the opinion that the grievor's performance flaws at the time of the incident may have been influenced by depression and the side effects of Champix.

In the Arbitrator's view this aspect of the Union's case is a two edged sword. It is not disputed that the grievor did not present to the Company any medical report or evidence which would indicate that he might have been suffering from depression at the time of the culminating incident. Additionally, if one accepts that Champix is a medication which can have a negative impact on cognitive abilities, what is to be made of the fact that the grievor operated high speed commuter trains without disclosing his use of that drug to the employer? It should seem self-evident that it is incumbent on any employee to know the nature and effects of any medication which they might be taking, and to keep their employer advised of any risks which might be related thereto. That was plainly not done by the grievor.

The grievor is not a long service employee with the Company, having been hired in 2009. His disciplinary record, as well as observations of his performance, leave little doubt but that he was less than comfortable in the operation of high speed commuter trains in the GO train service operated by the Company. Perhaps most significantly, he received two serious measures of discipline relating to rules infractions and had a previous overshooting of a platform before the culminating incident at the Port Credit station. For the reasons touched upon above, I am satisfied that the grievor's physical

and mental condition at the time, for which only he can take responsibility, as well as his grievous errors in the handling of his train did give the Company grounds to review his overall suitability for operating high speed GO trains. In my view the Company's determination that the grievor was simply not suited to that function was taken for good and valid reasons and should not be overturned.

For the foregoing reasons must be dismissed.

January 16, 2012

(signed) MICHEL G. PICHER
ARBITRATOR