

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4087

Heard in Montreal, Tuesday, 14 February 2012

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Assessment of forty (40) demerits to Conductor N. Diaz for violation of CROR 115 and 114 causing run a through switch at Westmore Terminals on January 15, 2011 and subsequent discharge for accumulation in excess of sixty (60) demerits.

COMPANY'S STATEMENT OF ISSUE:

On January 15, 2011, the grievor was called as the conductor on way freight assignment L59141-14, operating Walker to Walker via Morinville, with the assigned duties of spotting grain cars at the Westmore Grain Terminal. During this assignment, the grievor disregard the instructions on his work orders to spot 25 grain cars on track EA20, resulting in rail cars being shoved through the switch and equipment being left foul on the lead at the south end of the customer siding.

The grievor provided an employee statement with respect to the January 15, 2011 incident and was subsequently assessed forty (40) demerits for [violation of] CROA 115 and 114 causing a run through switch at Westmore Terminals. These forty demerits, coupled with the thirty-five (35) demerits already on the grievor's discipline record, resulted in his discharge for accumulation.

The Union contends that the grievor was relying on an old job aid that indicated track EA20 at Westmore Grain Terminals held 30 cars. Additionally, the Union contends that the discipline assessed is far beyond the norm for this type of incident and should be mitigated to the range of fifteen (15) demerits.

The Union requested the grievor be returned to work and be made whole.

The Company denied the Union's request and disagrees with the Union's contentions.

**FOR THE COMPANY:
(SGD.) P. PAYNE
FOR: DIRECTOR, LABOUR RELATIONS**

There appeared on behalf of the Company:

P. Payne	– Manager, Labour Relations, Edmonton
K. Morris	– Sr. Manager, Labour Relations, Edmonton
D. Crossan	– Manager, Labour Relations, Prince George
M. Farkough	– General Manager, Surrey
D. VanCauwenbergh	– Director, Labour Relations, Toronto

There appeared on behalf of the Union:

K. Stuebing	– Counsel
B. R. Boechler	– General Chairman, Edmonton
J. Robbins	– General Chairman, CN Lines Central, Sarnia
B. Willows	– General Chairman, LE, Edmonton

AWARD OF THE ARBITRATOR

It is not disputed that the grievor was responsible for violating rules CROR 115 and 114 when he caused the run through of a switch while spotting one of four tracks at the Westmore Grain Terminal at Morinville, Alberta, on January 15, 2011. The grievor admittedly failed to ride the point of his movement as he attempted to spot thirty cars in track EA20, a track into which he was instructed to spot only twenty-five cars. In the result, the switch at the south end of track EA20 was run through and damaged, and the lead end of the consist was left foul on the lead.

Following an investigation the Company assessed forty demerits against the grievor. Those demerits, coupled with the thirty-five active demerits on his record, resulted in his termination for the accumulation of in excess of sixty demerits.

When close regard is had to the grievor's service, there are few mitigating factors which come to bear in support of his grievance. Hired in March of 2007, Mr. Diaz had been an employee for only four years. In fact his active service was less, being a total of two years and ten months. That difference is attributable to what appears to have been prior discharges of the grievor, each of which was converted to a lengthy suspension. His first discharge, which occurred in 2008, was the result of a rule 439 violation. Mr. Diaz was again discharged in 2009 following the run through of a switch in violation of rules 104 and 114. That sanction was again reduced to a suspension. In addition, in the same year the grievor received a written reprimand for a prior violation of CROR rule 115.

There can be little doubt but that during the four years of his employment the Company has applied progressive discipline to attempt to rehabilitate what appears to be recidivism on the part of the grievor in respect of violating operating rules. Given his relatively short service, the Arbitrator can see little basis to conclude that the assessment of forty demerits was unreasonable in all of the circumstances. It may be noted that even an assessment of thirty demerits alone would have resulted in the grievor's termination. That amount would not, in my view, have been excessive given the unenviable record amassed by the grievor, including two prior discharges, in his short four years of employment with the Company.

The Arbitrator can see no compelling reasons for a reduction of penalty. The grievance must therefore be dismissed.

February 20, 2012

(signed) MICHEL G. PICHER
ARBITRATOR