

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4089

Heard in Montreal, Wednesday, 15 February 2012

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge assessed to Yardmaster C. Tucker for accumulation of demerits April 23, 2010 following receipt of 45 demerits for failure to apply sufficient protection for cars stalled in group 2, causing car UTLX 67027 to derail.

JOINT STATEMENT OF ISSUE:

On date, Yardmaster C. Tucker was required to attend a formal investigation in connection with the circumstances surrounding his responsibility in the derailment of railcar UTLX 670276 on April 23, 2010. Subsequent to these investigations, the Company issued a discipline form 780 assessing Mr. Tucker with 45 demerits resulting in discharge for accumulation effective April 30, 2010. Mr. Tucker's record stood at 90 active demerits and 1 written reprimand at the time of his discharge.

The Union contends that the discipline assessed is unjustified, unwarranted and excessive.

The Company deems the discipline assessed as both appropriate and warranted due to this very serious safety violation.

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

FOR THE COMPANY:
(SGD.) S. FUSCO
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
C. Graham	– STC Supervisor,
S. Dak	– Trainmaster, Toronto
A. Daigle	– Manager, Labour Relations, Montreal
D. Larouche	– Manager, Labour Relations, Montreal

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
J. R. Robbins	– General Chairman, Sarnia
B. R. Boechler	– General Chairman, CN Lines West, Edmonton
M. Vestroy	– Local Chairman, Toronto

AWARD OF THE ARBITRATOR

It is common ground that subsequent to the events which led to the grievor's discharge the Company has offered him reinstatement, an option which is apparently now being implemented, subject to Traffic Coordinator Tucker receiving appropriate medical clearance.

Two incidents led to the discharge of the grievor for the accumulation of demerits. The first incident occurred on February 26, 2010. The record discloses that the grievor made a mistake in yarding Roadswitcher L502. While he verbally instructed that movement to set out 48 cars into track RO25 in MacMillan Yard, manually showing them as having moved to that location on his own monitor, in fact the cars were moved into track RO27, an error which was not identified by the grievor. Subsequently he issued instructions to train X422 to double their consist into track RO27, believing it to be a clear track in accordance with the SRS system. In fact it was already occupied by the cars previously placed there. As a result, traffic from both train L502 and train X422 was shoved through track RO27 and out onto a lead, where it collided with another assignment. As a result of an ensuing investigation the grievor was assessed thirty demerits for his involvement in the misplacing of cars in RO27 and the subsequent side collision which occurred.

The second incident occurred on April 23, 2010. During the course of the grievor's tour of duty a loaded LPG tank car stalled coming off the hump and into track CO17. Because the grievor failed to sufficiently protect the stalled car it was struck by another car being switched on an adjacent track, causing the tank portion of the car to leave its trucks and fall to the ground. At the time of the second incident the grievor's record stood at forty-five demerits. The Company assessed a further forty-five demerits, which placed Mr. Tucker in the dismissible position of having ninety demerits.

The sole issue in this grievance is appropriate measure of discipline. The Union expressed the concern that by reason of the delay between his termination and reinstatement, the grievor has unfairly lost a considerable period of pensionable service. While the Arbitrator can appreciate that consequence, the fundamental question must be whether in fact Mr. Tucker placed himself in a position which would have justified the assessment of demerits that resulted in his termination.

In considering that question the Arbitrator has some difficulty with the suggestion that the first incident should have deserved less than thirty demerits. By his own manipulation of the system Mr. Tucker created a situation where it appeared that a cut of cars was in fact stored on track RO25 when in reality it was placed in track RO27. In fact the grievor made an important supposition with respect to the actual location of the cars, believing them to be in track RO25 when in fact they were not. That error led to

the subsequent collision. In my view, given the nature of the error committed and the gravity of the consequences, the assessment of thirty demerits was not inappropriate.

I am also satisfied that an important degree of discipline was justified by the grievor's failure to protect the stalled loaded LPG tank car. Even if that incident is considered sufficiently serious to justify fifteen demerits as opposed to forty-five demerits, the grievor would nevertheless have been placed in a dismissible position given that he had forty-five on his record at the time. In my view the Company's determination as to the merits to be assessed against the grievor was not, on the whole, unreasonable. Nor do I consider that the lower degree of discipline assessed against the train crew involved in the incident of February 26, 2010, is such as to conclude that the discipline against the grievor was discriminatory.

On the whole, I am satisfied that the grievor was deserving of the discipline assessed, and the grievance must be dismissed.

February 20, 2012

(signed) MICHEL G. PICHER
ARBITRATOR