

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4090

Heard in Montreal, Wednesday, 15 February 2012

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of discharge of Conductor R. Doner.

JOINT STATEMENT OF ISSUE:

On November 17, 2010, Conductor Doner's crew's train entered the limits of a foreman's Track Occupancy Permit without first receiving instructions. Following an investigation into this incident, Conductor Doner's employment was terminated on December 8, 2010 for an accumulation of demerits.

The demerits in question were all assessed on December 10, 2010 as follows: 50 demerits for "Failure to obtain instructions from Foreman B. Chua authorizing your train's movement prior to entering the limits of his Track Occupancy Permit ... while employed as a conductor on train 232-16 on November 17th, 2010." Conductor Doner was assessed a further 60 demerits "for blatant misuse of your cellular phone throughout your entire tour of duty on train 232-16 on November 17th, 2010 ... a violation of General Rule A (xii) & SSI."

The Union contends that Conductor Doner's dismissal was unwarranted and excessive in all of the circumstances.

The Union requests that Conductor Doner be reinstated without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the arbitrator sees fit.

The Company disagrees and denies the Union's request.

FOR THE UNION:
(SGD.) W. APSEY
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.) J. CHAPMAN
FOR: MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Burke	– Labour Relations Officer, Calgary
M. Thompson	– Labour Relations Officer, Calgary
R. Mayhew	– Trainmaster, St. Luc Yard

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
B. Hiller	– General Chairman, Oshawa
W. Apsey	– Vice-General Chairman,
B. Brunet	– General Chairman, LE, Montreal
R. Doner	– Grievor

AWARD OF THE ARBITRATOR

There is no dispute that the grievor violated the Track Occupancy limits of Foreman Ben Chua on the Vaudreuil Subdivision on November 17, 2010. Additionally, by the grievor's own admission, that cardinal rule violation was prompted by the fact that he was distracted in the use of his personal cell phone to view family photographs. As the evidence records, the grievor made use of his cell phone, contrary to what he understood to be the rule, while his train was stopped at mile 21 and for a short time when his movement resumed operating, until he realized that he had violated the TOP.

Following a disciplinary investigation the Company assessed fifty demerits for the grievor's TOP violation and a further sixty demerits for his misuse of his cellular phone during the course of his tour of duty.

The sole issue in this grievance is the appropriate measure of discipline. The Arbitrator fully appreciates the concerns of the Company. The grievor's distraction by the use of his cell phone, contrary to rules of which he was aware, in fact led to a

cardinal rule infraction in the violation of the Track Occupancy Permit of a Track Maintenance Foreman. That incident could have had serious consequences, which fortunately it did not.

As serious as the incident may be, however, there are mitigating factors to be considered. While there have been interruptions in the grievor's service with the Company, he has not accumulated a negative discipline record over some twenty-six years of service. Between 1984, when he was first hired, and 2009 he was assessed only ten demerits. While he did receive other discipline during his years of service, his record was clear at the time of the incident which led to his termination.

In the Arbitrator's view this is an appropriate case for a reduction of penalty, albeit to a nevertheless serious degree of discipline. The grievance is therefore allowed in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for his wages and benefits lost and without loss of seniority. A suspension shall be substituted on his record for his combined violation of the track Occupancy Permit and unauthorized use of his personal cell phone, with all demerits to be removed from his record.

February 20, 2012

(signed) MICHEL G. PICHER
ARBITRATOR