

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

CASE NO. 4098

Heard in Montreal, Tuesday, 10 April 2012

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Assessment of 19 demerits for failure to comply with GOI 8.12.12 while familiarizing on M37231-21 on June 21, 2010

Assessment of 20 demerits for failure to comply with GOI 8.12.5 and 8.12.7 while working as Conductor on M30831-10 at MacMillan Yard on Thursday, February 10th, 2011, resulting in discharge for accumulation of demerits effective February 14, 2011

JOINT STATEMENT OF ISSUE:

On June 21, 2011, Conductor Andrew Gould was working train M37231-21 at MacMillan Yard, familiarizing following a period of suspension. While attempting to line a drawbar, Mr. Gould was observed aligning the drawbar while the car was in motion and placing himself between two cars with less than 50 feet separation. Following his investigation, he was assessed with 19 demerits.

On February 10, 2011, Conductor Gould was working as the Conductor on train M30831-10 at MacMillan Yard. While performing switching activity, he was observed detraining facing-forward and throwing a hand-operated switch with a single hand. Following his investigation, he was assessed with 20 demerits which led to his discharge for accumulation of 79 demerits effective February 14, 2011.

Mr. Gould's record stood at 59 active demerits at the time of the final assessment of discipline.

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

The Company disagrees.

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

**FOR THE COMPANY:
(SGD.) S. FUSCO
FOR: SR. VICE-PRESIDENT, OPERATIONS**

There appeared on behalf of the Company:

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| S. Fusco | – Manager, Labour Relations, Toronto |
| D. Gagné | – Sr. Manager, Labour Relations, Montreal |
| K. Maltby | – Trainmaster, MacMillan Yard |
| L. Karn | – Trainmaster, MacMillan Yard |
| D. Larouche | – Manager, Labour Relations, Montreal |

There appeared on behalf of the Union:

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| J. Lennie | – Vice-General Chairman, Niagara Falls |
| J. Robbins | – General Chairman, Sarnia |
| C. Little | – Local Chairwoman, Belleville |
| P. Boucher | – Arbitration Coordinator, Montreal |
| A. R. Gould | – Grievor |

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that by reason of three relatively minor incidents the grievor, an employee of twenty-six years' service, was discharged. On June 21, 2010 he was observed kicking a draw bar while attempting to align it to couple two cars. It is also suggested that on that occasion he stood between two cars which were less than fifty feet apart. That incident drew an assessment of nineteen demerits.

The second incident concerns two procedural errors committed by the grievor on February 10, 2011. Firstly, he was observed by Trainmaster Larry Karn of MacMillan Yard detrainning a locomotive by descending the stairs in a forward facing position rather than facing the locomotive itself and descending the steps backwards. On the same tour of duty he was further observed throwing a switch with one hand rather than two, while he held his radio in the other hand. Following an investigation he was assessed twenty demerits for those infractions. It may be noted, as acknowledged by the Company's representative, that in the forty-seven years of this Office's existence there has never

before been a case involving discipline for facing forward while descending locomotive stairs. The Arbitrator accepts that each of the errors identified by the Company were in fact committed. The real issue is the proper measure of discipline in all of the circumstances.

I am satisfied that the discharge of the grievor is excessive given the relatively minor nature of each of the infractions here examined. As has been previously recognized in this Office, in substance the grievor's actions do not involve flagrant violations of safety rules and procedures so much as a failure to follow best practices. In my view there were errors of judgement committed both by the grievor and by the Company.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority. The thirty-nine demerits are to be removed from his record and half the period between his termination and reinstatement to be registered as a suspension for his procedural infractions. The grievor shall be compensated for one half his wages and benefits lost.

April 16, 2012

(signed) MICHEL G. PICHER
ARBITRATOR