

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4099

Heard in Montreal, Tuesday, 10 April 2012

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The assessment of 30 demerits effective July 21, 2011 to the record of Halifax Conductor I. Munroe, ultimately resulting in his discharge for accumulation of (85) demerits.

JOINT STATEMENT OF ISSUE:

On July 20, 2011 Mr. Munroe was required to attend a formal statement in connection with his alleged violation of CROR 439 while working as a conductor on L507 on July 21, 2011. Following the investigation Mr. Munroe was assessed 30 demerits resulting in his dismissal, effective August 23, 2011, for accumulation of (85) demerits.

It is the Union's position that the discipline assessed, in consideration of all factors relating to this matter, is excessive, unwarranted and inappropriate. The Union requests that the discipline assessed be removed from his record and that the grievor be reinstated without loss of seniority and benefits and he be compensated for all lost earnings as a result of the discharge. As an alternative, the Union requests the discipline be amended in such a manner that would result in the grievor's return to full employment with the Company.

The Company disagrees with the Union's position.

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

FOR THE COMPANY:
(SGD.) A. DAIGLE
FOR: SR. VICE-PRESIDENT

There appeared on behalf of the Company:

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

D. Larouche – Manager, Labour Relations, Montreal

There appeared on behalf of the Union:

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

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that on July 21, 2011 the grievor was the conductor of train L507 operating between Halifax and Milford. At Mile 38.31 of the Bedford Subdivision the grievor and his locomotive engineer performed some switching which involved shoving two cars into siding track TU42 which is located at Signal H382.

The evidence confirms that upon arrival at that location the grievor detrained and opened the switch into track TU42 and removed a derail. During that time Locomotive Engineer Johnstone obtained a track warrant for the mainline between Signals H381 and H276, which involved the better part of the territory between Milford and Sandy Cove. It did not, however, include Signal H382 which was located at Siding TU42 where the two cars were being deposited. In fact when their work was completed in the siding Locomotive Engineer Johnstone proceeded back out onto the mainline. While he was doing so the grievor was on the ground completing work with respect to the replacement of a derail. Locomotive Engineer Johnstone then operated his unit back onto the mainline by violating the red indication at Signal 382 which effectively controlled access from the siding to the mainline.

Following the subsequent investigation the locomotive engineer was assessed what ultimately became a thirty day suspension while the grievor was assessed thirty demerits and discharged for the accumulation of demerits.

In the Arbitrator's view there are mitigating factors to be taken into account. Significant among those is the fact that the grievor did not have a sight line to the stop signal at Signal H382. That is so as he was working on the ground and that a view of the signal was in fact blocked by the locomotive as it proceeded to leave the siding. During both their investigatory statements Locomotive Engineer Johnstone and Conductor Monroe explained that they did not feel that they needed to concern themselves with Signal H382 as they believed it would be suspended because the switch between the siding and the mainline was left open. That assumption was obviously not correct.

It is true that a violation of CROR 439 is a cardinal rule offence which normally attracts a serious level of discipline, not uncommonly in the range of thirty demerits. I also consider it relevant that the discipline assessed against the grievor is substantially more severe in its consequences than that which was given to Locomotive Engineer Johnstone. Considering that both employees were relatively equally responsible for the violation of the rule, it is less than clear why one of them should receive a suspension while the other was assessed demerits resulting in discharge. I am satisfied that there was a degree of inequity, if not discrimination, in the different manner in which both employees were disciplined.

The Arbitrator therefore directs that the grievor be reinstated into his employment forthwith, with the thirty demerits assessed against him to be removed from his record. The time between his termination and reinstatement shall be recorded as a suspension for his violation of CROR 439.

April 16, 2012

(signed) MICHEL G. PICHER
ARBITRATOR