

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4120**

Heard in Montreal, Tuesday, 10 July 2012

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Assessment of 15 demerits for failure of GOI Section 1, Item 1.7 for rough handling of a TIBS unit on June 8th, 2008.

Assessment of 15 demerits for delay to train A42131 25 at Aldershot Yard on February 25th, 2010.

Assessment of 15 demerits for stopping an engine too close to OG 33 switch at Oakville on November 12th, 2010.

Assessment of 15 demerits for missing a call on November 14th, 2010, which resulted in a discharge being assessed to Conductor D. Prenty for accumulation of demerits, November 20th, 2010.

JOINT STATEMENT OF ISSUE:

On June 8th, 2008, Conductor Prenty was working L57731 08 and was instructed to drop off TIBS at MacMillan Yard. Upon dropping it to the ground from the engine, he was told that the manner in which he dropped the TIBS off was contrary to GOI Section 1, item 1.7. Following his investigation he was assessed 15 demerits.

On February 25th, 2010, Conductor Prenty was working on train A42131 25 when his train incurred a delay of 1 hour at Aldershot. Following his investigation he was assessed 15 demerits.

On November 12th, 2010, Conductor Perry was working at Oakville Yard. When travelling light engines his movement stopped directly on top of OG33 switch, located at the east end of the yard resulting in damage to the switch. Following the investigation he was assessed 15 demerits.

On November 14th, 2010, Conductor Perry was called for a Conductor Pilot assignment at 03:45 when he missed the call for work. Following an investigation he was assessed with 15 demerits resulting in discharge for accumulation effective November 20th, 2010.

Mr. Prenty's record stood at 80 active demerits and 3 written reprimands at the time of this discharge.

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

The Company disagrees with the Union's position.

FOR THE UNION:

(SGD.) J. R. ROBBINS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. FUSCO
FOR: SR. VICE-PRESIDENT, OPERATIONS,
EASTERN REGION

There appeared on behalf of the Company:

S. Fusco	– Manager, Labour Relations, Toronto
D. Gagné	– Sr. Manager, Labour Relations, Montreal
D. Larouche	– Manager, Labour Relations, Montreal
D. Van Cauwenbergh	– Director, Labour Relations, Toronto

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
J. R. Robbins	– General Chairman, Sarnia
J. Lennie	– Vice-General Chairman, Sarnia
E. Page	– Local Chairman,

AWARD OF THE ARBITRATOR

This decision involves four grievances. Each grievance concerns the assessment of fifteen demerits, three of them for rules violations and one of them for a missed call.

The first incident concerns the grievor's delivery of a TIBS unit on June 8, 2008. He had earlier in the day been requested by supervisors to carry the TIBS unit on the deck of his locomotive and deliver it at MacMillan Yard. The evidence indicates that at the point when his movement was about to leave MacMillan Yard he realized that he had forgotten about the TIBS unit and that he lowered it by its hose bag from the railing

of the locomotive, finally dropping it some two feet onto the gravel surface below. There was no damage to the TIBS unit although it is not disputed that the grievor's handling of it was obviously inappropriate.

In the Arbitrator's view the assessment of fifteen demerits was excessive in that circumstance. I am satisfied that a reprimand would have been appropriate and sufficient to alert the grievor to the need to exert more care in the handling of Company equipment. The Arbitrator therefore directs the removal of the fifteen demerits from the grievor's record and the substitution of a written reprimand.

The second incident involved the delay to train A42131 25 at Aldershot Yard, on February 25, 2010. The material before me does confirm that the grievor was responsible, at least in part, for the delay to his train, because he separated various cuts of cars which he was to deliver to Hamilton and Niagara Falls in a manner which was in fact inefficient and required more time than was truly necessary. I am satisfied, however, on the basis of the record before me that some of the delay was contributed to by the unfamiliarity and instructions given to the grievor by a trainmaster who was on location with him at Aldershot when the delay occurred. I am inclined to accept the suggestion of the Union that part of the delay was attributable to the Company. In the result, I direct that the discipline assessed against the grievor be reduced to ten demerits for that incident.

The grievor was next assessed fifteen demerits for allowing his engine to operate over switch OG33 at Oakville on November 12, 2010. On that occasion, in dark and foggy conditions, the grievor was assigned as a brakeman. He and his conductor were riding the point on the footboard of the locomotive. Their movement was travelling at a slow speed so that they would be in a position to identify any switches which might not be properly lined for their movement. As they approached switch OG33 they saw that in fact it was not properly lined and they called a direction to stop to their locomotive engineer. Unfortunately, by the time the engineer responded the locomotive had proceeded on top of the switch, although it was not fully run through. It does not appear disputed that there was some damage to the switch as a result of what occurred.

In the Arbitrator's view there was cause for discipline, but the fifteen demerits assessed against the grievor was excessive, given the mitigating circumstances. Given that the grievor notified his locomotive engineer as promptly as he could with respect to the condition of the misaligned switch and the need to stop, and was not himself in command of the locomotive, as he might be had he been operating a belt pack control, there is a degree of mitigation that comes to bear, particularly given the dark and difficult conditions in which he was working. In my view the assessment of five demerits was appropriate and a substitution of penalty should therefore be made accordingly.

The final incident under review concerns the grievor's failure to respond to a call on November 14, 2010. As appears from the record, the apparent reason for the grievor's failure to answer the call was the supposed failure of his cell phone to acquire

a signal at the time the call was made to his home. With respect, that is a risk which is upon the grievor, and not upon the Company. I can see no basis upon which to reduce the penalty assessed for the grievor's missed call, as fifteen demerits is within the normal range of discipline for such an infraction.

In the result, the Arbitrator directs that the grievor's discipline be corrected to reflect a reprimand for his handling of the TIBS equipment, ten demerits for the delay of his assignment on February 25, 2010, five demerits for his involvement with his locomotive stopping to switch OG33 at Oakville on November 12, 2010 and fifteen demerits to remain in respect of his missing a call on November 2010. In the result, I direct that the grievor be reinstated into his employment, with his discipline to stand at fifty (50) demerits. In the circumstances, given the extent of the discipline and the apparent passage of time, I do not consider this an appropriate case for any order in respect of compensation. The grievor shall therefore be reinstated forthwith, without compensation for wages and benefits lost.

July 17, 2012

(signed) MICHEL G. PICHER

ARBITRATOR