

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4125**

Heard in Montreal, Wednesday 11 July 2012

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal on behalf of Conductor J. Rousseau of the assessment of the discipline of 20 demerit marks for "Failure to comply with CROR General Rule A items (iii) and (vi), and CROR 106, during your tour of duty on May 14, 2011."

COMPANY'S STATEMENT OF ISSUE:

On May 14, 2011, Mr. Rousseau was assigned as the Assistant Conductor 23:00 hours Fort Rouge industrial yard assignment in Winnipeg, and was determined to have committed the above-noted rules infractions.

The Company conducted an investigation of the incident and determined that Conductor Rousseau had violated the rules noted and was deserving of the discipline of 20 demerit marks..

The Union contends that Mr. Rousseau was not in charge of the conductor trainee, cannot be held responsible for the trainee and that the discipline was undeserving, unjust and must be expunged.

The Company disagrees with the Union's contentions.

FOR THE COMPANY:

(SGD.) D. BRODIE

FOR: VICE-PRESIDENT, HUMAN RESOURCES

There appeared on behalf of the Company:

D. Brodie	– Manager, Labour Relations, Edmonton
D. Van Cauwenbergh	– Director, Labour Relations, Toronto
K. Morris	– Sr. Manager, Labour Relations, Edmonton

P. Payne – Manager, Labour Relations, Edmonton
T. Brown – General Manager, Montreal

There appeared on behalf of the Union:

K. Stuebing – Counsel, Toronto
B. R. Boechler – General Chairman, Edmonton
R. A. Hackl – Vice-General Chairman, Edmonton
J. R. Robbins – General Chairman, CN Lines Central, Sarnia

AWARD OF THE ARBITRATOR

The record confirms that the grievor was a relatively junior employee at the time of the incident here under consideration. He first entered service as a conductor trainee in April of 2010. He was then terminated as a probationary employee in September of 2010. Some months later, in March of 2011 he was brought back to employment through an agreement made between the Company and the Union. He ultimately qualified as a conductor on April 24, 2011.

The record confirms that on May 14, 2011 he was working an assignment in the Fort Rouge Industrial Yard, working in the company of Conductor Paul MacDonald and Conductor Trainee Justin Sarrasin. During the tour of duty Mr. MacDonald and Mr. Rousseau were observed by a supervisor to be standing on the point of their movement as it passed the building where the supervisor was located. While the two employees were on the point of the locomotive, Superintendent James Thompson observed the trainee sitting in the middle seat of the locomotive, reclining and asleep.

Following a disciplinary investigation the Company determined that the grievor had failed in the proper supervision of the trainee, including compliance with CROR General Rule A and CROR 106.

While the Union argues, in mitigation, that Mr. MacDonald was in fact the conductor charged with responsibility for the trainee, I am compelled to accept the Company's representation that in his capacity as assistant conductor the grievor nevertheless had an obligation to observe and correct any obvious error in the actions or performance of the trainee. I must agree with the Company that it was simply inconsistent with that obligation for the grievor to allow the trainee to remain asleep in the cab of the locomotive in the circumstances disclosed.

In my view the assessment of twenty demerits was not excessive in the circumstances. Nor are there mitigating factors which would suggest a reduction in penalty. For these reasons the grievance is dismissed.

July 26, 2012

(signed) MICHEL G. PICHER

ARBITRATOR