

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4126**

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 10 demerit marks for :Failure to comply with Divisional Notice PRN 4011/08 fail to report spotted cars at customers on May 17, 2011 while working YLTS60.”

COMPANY’S STATEMENT OF ISSUE:

On May 17, 2011, Mr. Rousseau was assigned as the assistant conductor on a 23:00 hours industrial yard assignment in Winnipeg and was determined to have failed to comply with the instructions noted.

The Company conducted an investigation of the incident and determined that Conductor Rousseau had failed to comply with the instructions and was deserving of the discipline of 10 demerit marks.

The Union contends that Mr. Rousseau was not responsible for the reporting and that the discipline was undeserving 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, as alleged by the Company, that the grievor did in fact fail to comply with the Company's divisional notice. Having spotted cars at a malt plant during his tour of duty on May 17, 2011, the grievor and his conductor were under an obligation to report the spotting of those cars to the yardmaster. The record confirms that when the yardmaster was first contacted, he advised the grievor that he was too busy to handle his call and that he should call back later. In fact the grievor never called back.

Following a disciplinary investigation on May 28, 2011 it was confirmed that the grievor had failed to report the cars spotted at the Company's customer and ten demerits were assessed against him.

I can see no basis to find that the Company did not have grounds to discipline the grievor or that the assessment of ten demerits was inappropriate. There are no significant mitigating factors to consider and in all of the circumstances I must conclude that the Company had just cause for the discipline assessed.

The grievance is therefore dismissed.

July 26, 2012

(signed) MICHEL G. PICHER

ARBITRATOR