

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

**CASE NO. 4127**

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 Winnipeg, Manitoba, appealing the discipline of 45 demerit marks assessed for “Violation of CROR 106, CROR 108, CROR 114(a) resulting in a collision with train M34371-08 on July 11, 2011 while working the 2300 W Tower assignment in Symington Yard” and his resulting discharge for accumulation of demerit marks in excess of sixty effective July 14, 2011.

**COMPANY’S STATEMENT OF ISSUE:**

On July 11, 2011, Mr. Rousseau was assigned as the conductor on the 23:00 W Tower assignment in Symington Yard and was involved in the collision of his movement with Train 343.

The Company conducted an investigation of the incident and determined that Conductor Rousseau had violated the rules noted and was deserving of discipline, which subsequently discharge him for accumulation of demerit marks.

The Union contends that the Company’s assessment of discipline to Mr. Rousseau was excessive for a very new employee, that it should be reduced to a much lesser degree and that Mr. Rousseau ought to be reinstated and made whole.

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 discloses that the grievor was in fact responsible for a collision between his yard movement and another train on July 11, 2011.

The facts relating to the collision are relatively simple. On the day in question the grievor was assigned as conductor of the 23:00 W Tower assignment in Symington Yard. He was then accompanied by an assistant conductor and a conductor trainee. Part of his assignment involved pushing cars into track W103. From a distance he judged the W103 switch to be showing a yellow indication and he believed he could see the points properly lined for track W103. He then assumed the switch was lined for his movement.

In fact it was not. As his cars were shoved eastwards towards track 103 they did not move into track W103, but rather deviated and collided with train M34371 08, which was itself moving eastward along the west receiving lead into track WR04. While the grievor realized his error before the collision and attempted to instruct the trainee to place the movement into emergency, they were unable to stop the train before the collision occurred. Further, it does not appear disputed that for the train to have moved properly into track W103 the switch target should have been green, and not yellow. The collision is said to have caused some \$3,000 worth of damage.

Following a disciplinary investigation the grievor was assessed forty-five demerits for a number of rule violations, including CROR 106, 108, 114(a) and 114(b).

The grievor is not a long service employee. He was hired in 2010 and was terminated as a probationary employee in September of the same year. Thereafter the Company agreed with the Union to bring him back into service in or about March of 2011. In the period between March and July, prior to this culminating incident, the grievor had attracted two other heads of discipline, and had thirty demerits in his record at the time of this incident. As indicated in **CROA&DR 4125** and **4126**, those measures of discipline were sustained by this Office.

There are no mitigating circumstances that would, in my view, justify a reduction of the penalty in the case at hand. In any event, even if the demerits were reduced to thirty, the grievor would still be in a dismissible position. On the whole, he has recorded an obviously unenviable work record in a very short time. I can see no reason to disturb the decision of the Company.

For these reasons the grievance is dismissed.

July 26, 2011

**(signed) MICHEL G. PICHER**  
ARBITRATOR