

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

CASE NO. 4130

Heard in Montreal, Thursday 12 July 2012

Concerning

VIA RAIL CANADA INC.

And

**THE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION
AND GENERAL WORKERS' UNION OF CANADA (CAW-CANADA)**

DISPUTE:

The assessment of 45 demerits to S. Gagnon-Lewis, which resulted in his dismissal for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On June 17, 2011, Mr. Gagnon, a locomotive attendant at the Montreal Maintenance Centre, was involved in a collision between trains 20 and 601 around 02:18 hrs. He was investigated on June 30, 2011. On July 11, 2011, he was assessed 45 demerits. As a result, his employment was terminated for accumulation of demerits.

The Union submits that the assessment of 45 demerit points for the incident is punitive in nature and an inconsistent application of discipline in similar circumstances.

The Union submits that Mr. Gagnon be reinstated back to his former position and be made whole in all respects including, where appropriate, the payment of compensation for lost wages with interest.

The Corporation submits that the discipline issued was appropriate in all circumstances.

FOR THE UNION:
(SGD.) J. FOURNIER
NATIONAL REPRESENTATIVE

FOR THE COMPANY:
(SGD.) J. MAILHOT
FOR: SR. ADVISOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

J. Mailhot	– Advisor, Labour Relations, Montreal
B. A. Blair	– Sr. Advisor, Labour Relations, Montreal
K. Murphy	– Manager, CE SWO
A. Leduc	– Supervisor, Servicing
G. Côté	– Manager, Servicing, MMC, Montreal

There appeared on behalf of the Union:

J. Fournier	– National Representative, Montreal
R. Fitzgine	– Shop Representative,
D. Andru	– Regional Representative, Toronto
S. Auger	– Regional Representative, Montreal
F. Sauvé	– Grievance Chairman, Montreal
S. Gagnon-Lewis	– Grievor

AWARD OF THE ARBITRATOR

There can be no dispute but that the grievor was responsible for a collision while on duty as a Locomotive Attendant on June 17, 2011. The material before me confirms that the grievor was instructed to move a passenger train consist which was in fact situated on a track adjacent to the train that he was stationed in. In fact he moved the train that he was in rather than the train that he was directed to move, causing a collision with another passenger train consist located immediately behind him. I am compelled to conclude that the accident occurred, in part, because the grievor failed to observe the proper radio protocols, and did not repeat the command that was given to him, thereby avoiding the possibility of recognizing that he had misunderstood which train he was to move.

The grievor's record is not impressive, particularly considering that he was hired in 2007. He was discharged for a previous collision, and reinstated by the order of this Office in **CROA&DR 3906**, subject to an extensive suspension. Subsequently, he was assessed forty demerits, a measure upheld by this Office, for deliberately sleeping on the job. In my view there are simply no meaningful mitigating factors which would justify the Arbitrator's interference with the forty-five demerits assessed against the grievor by

the Corporation for what can only be described as a collision clearly caused by the grievor's own inattention and negligence.

For these reasons the grievance must be dismissed.

July 17, 2012

(signed) MICHEL G. PICHER

ARBITRATOR