

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

**CASE NO. 4141**

Heard in Montreal, Tuesday, 9 October 2012

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Discharge assessed to Conductor David Degagne for collision between railcar TILX 640163 and locomotive CN 8009 on January 20, 2010, while employed as 23:59 Dual Yardmaster.

**JOINT STATEMENT OF ISSUE:**

On January 20, 2010, Yardmaster David Degagne was required to attend a formal investigation in connection with the circumstances surrounding his involvement in the collision between railcar TILX 640163 and locomotive CN 8009 which occurred during his 23:59 Dual Yardmaster shift at Macmillan Yard.

Subsequent to this investigation the Company issued a discipline form 780 assessing Mr. Degagne with discharge effective January 20, 2010.

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

The Company deems the discipline assessed as both appropriate and warranted due to the very serious safety violation.

**FOR THE UNION:**  
**(SGD.) J. R. ROBBINS**  
**GENERAL CHAIRMAN**

**FOR THE COMPANY:**  
**(SGD.) S. FUSCO**  
**FOR: SR. VICE-PRESIDENT, OPERATIONS**

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
J. Boychuk	– General Manager, Toronto

There appeared on behalf of the Union:

J. Lennie – Vice-General Chairman, Sarnia  
J. R. Robbins – General Chairman, Sarnia

### **AWARD OF THE ARBITRATOR**

Upon a review of the material, the Arbitrator is satisfied that the grievor, acting as traffic coordinator at MacMillan yard on January 20, 2010, did bear some responsibility for a collision involving train 451. The record confirms that Mr. Degagné instructed a yard operating employee to trim tracks CO48 and CO51. Notwithstanding his knowledge that that operation was ongoing, Mr. Degagné nevertheless instructed train 451 to proceed towards the front lead. That instruction placed the train directly in the path of rolling stock emanating from track CO48. In fact, a rolling car from that track collided with the locomotive of train 451. I am satisfied that as yardmaster the grievor should have exercised a degree of vigilance to prevent the collision which occurred.

In considering the appropriate measure of discipline, I consider the subsequent actions of the Company to be a mitigating factor. It does not appear disputed that on more than one occasion the grievor was given an offer to return to work, although it appears that he did not accept that offer. It is less than clear whether the offer was conditioned on his foregoing his grievance and possible compensation. In any event, the Company's offer does, at the very least, suggest that it did not view the grievor's record and actions as necessarily severing the possibility of his employment.

In the result, the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for wages

and benefits lost and without loss of seniority, with his discipline record to stand at fifty demerits. However, as a condition of reinstatement the grievor shall be subject to the Company's discretion as to whether he should be assigned to work as a traffic coordinator or be compelled to exercise his seniority to take other employment within the bargaining unit. Should the decision be made to prevent the grievor from returning to work as a traffic coordinator, the Company shall be entitled to maintain that condition for a period of not more than two years.

October 15, 2012

**(signed) MICHEL G. PICHER**

ARBITRATOR