

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4142

Heard in Montreal, Tuesday, 9 October 2012

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Assessment of 20 demerits to Conductor R. Tice for the violation of attendance management guidelines between December 16, 2010 and January 8, 2011.

Assessment of 20 demerits to Conductor R. Tice for violation of CROR Rule 115 on February 8, 2011 while working as conductor, resulting in the derailment of CN 135110.

Discharge assessed to Conductor R. Tice for accumulation of demerits on February 15, 2011.

JOINT STATEMENT OF ISSUE:

The Company alleges that Mr. Tice violated the CN attendance management policy between December 16, 2010 and January 8, 2011. Following his investigation he was assessed 20 demerits.

On February 8, 2011, Conductor Tice was working on train L547 as Aldershot Yard when he failed to stop short of a switch improperly lined resulting in a derailment of his movement. Following his investigation he was assessed 20 demerits which led to his discharge for accumulation of 60 demerits effective February 15, 2011. Mr. Tice's record stood at 50 active demerits at the time of the final assessment of 20 demerits (AMS) and 20 demerits (Rule 115).

The Union contends that the discipline assessed is unjustified, unwarranted and excessive. The Union further submits that the assessment is in violation of articles 82 and 85.5 and Section 239 of the *Canada Labour Code*.

The Company disagrees with the Union's position.

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

The discharge of the grievor is supported on two separate counts of discipline. While his record stood at fifty demerits, he received twenty demerits for his violation of attendance management guidelines and a further twenty demerits for a violation of CROR 115 for running through a switch.

Upon a review of the evidence I am satisfied that the grievor did make himself liable to discipline for his failure to maintain suitable attendance standards. As one example, he was required to exercise his seniority within forty-eight hours of the time he was notified of being displaced from his locomotive engineer's assignment. In fact he did not exercise his seniority until some five days or 120 hours after he was bumped from his position. Even if it is accepted that the grievor was not advised of being bumped until his return from work following his days of rest, he would still have been well in excess of the permissible forty-eight hours.

I do not consider it necessary to consider whether the grievor would separately have been liable to discipline for booking sick on December 23, 2010 or on January 4,

2011. In any event, in neither case did the Company seek medical documentation from the grievor.

I am also compelled to conclude that the grievor bears some responsibility for the run-through switch which occurred on February 8, 2011 at Aldershot. The record confirms that riding the point of his movement, he detrained some four hundred feet from switch KA33, which was not lined for his movement. That resulted in a derailment of both ends of a car and a partial collision between the derailed car and another car which caused some damage. During the course of his investigation the grievor admitted his responsibility.

The Arbitrator cannot accept the suggestion of the Union that the Company failed to provide a fair and impartial investigation. It would seem that the Company did have in its possession a video tape of the switch run-through incident, a tape which would presumably have clarified the positioning of the switch target. However, the record confirms that the Union was made aware of the existence of the tape by way of documents provided to it at the outset of the disciplinary investigation. For reasons which he best appreciates, the Union's representative did not request the production of the tapes at that time. I fail to see on what basis the Company can be faulted for the withholding of the tapes, as no request was made for them and they were not, in any event, in the possession of the investigating officer, insofar as the record would indicate.

The real issue in the instant case is the appropriate measure of discipline. In my view the grievor's lengthy service must be taken into account. A further mitigating factor is the improvement in the grievor's attendance record over more recent times, as stressed by the Union. In the Arbitrator's view this is an appropriate case for a reinstatement without compensation.

For the foregoing reasons 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.

October 15, 2012

(signed) MICHEL G. PICHER
ARBITRATOR