

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION  
CASE NO. 4144**

Heard in Montreal, Tuesday 9 October 2012

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Discharge of V. Browne for his involvement in the derailment at Isis while operating as the locomotive engineer on assignment Q11451 06 on April 9, 2012.

**JOINT STATEMENT OF ISSUE:**

Mr. Browne was the locomotive engineer from Hornepayne and worked for CN since August 2005. On April 9, 2012, he was working as the engineer on Q11451 06. During the trip he was backing up on the main line to make a join after pulling out of the siding at Isis. He collided with the cars of his train on which he was to join causing a derailment. The Union asserts that the Company violated article 71.2 by failing to conduct a fair and impartial investigation, that the discipline is excessive and that the discharge ought to be substituted with a 2 day suspension or a written reprimand. Alternative, the Union asserts that the grievance ought to be allowed on terms the arbitrator deems appropriate.

The Company disagrees. In light of the circumstances of the incident and Mr. Browne's record, the Company asserts that discharge is warranted.

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

**FOR THE COMPANY:**  
**(SGD.) M. MARSHALL**  
**SR. MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

M. Marshall	– Sr. Manager, Labour Relations, Toronto
D. Larouche	– Manager, Labour Relations, Montreal
D. Gagné	– Sr. Manager, Labour Relations, Montreal
D. Van Cauwenbergh	– Director, Labour Relations, Toronto
R. Romain	– Engine Service Officer, Eastern Canada
R. Baker	– Superintendent, NOZ

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
P. Vickers	– General Chairman, Sarnia
P. Boucher	– Arbitration Representative, Ottawa
J. R. Robbins	– General Chairman, TCRC (CTY), Sarnia
J. Lennie	– Vice-General Chairman, Sarnia
V. Browne	– Grievor

### **AWARD OF THE ARBITRATOR**

The grievor was the locomotive engineer on train Q11451 06 on April 9, 2012 operating from Armstrong to Hornepayne on the Caramat Subdivision, travelling eastward. The grievor and his crew were required to perform a double siding meet. Because of the length of their train they were to separate it and place its cars into two separate sidings at Bawk, at Mile 115.3 and Isis at Mile 108.2 to allow two westbound trains to pass.

Once the meet was completed, the grievor and his crew were required to reassemble their train. Following the meet the grievor operated his train to the Bawk Siding where he picked up the tail end of the train. Leaving the tail end of the train some five car lengths short of the west end of the siding at Isis, Mr. Browne then backed into the siding which contained the head end of the train and coupled onto it. He then pulled forward onto the main line in preparation for coupling the head end of the train to the tail end.

It appears to be common ground that the tail end of the train was some thirty car lengths to the rear of the head end consist. Brakeman Devon Doiron and Conductor

Chad Verrino then took up positions on the ground to give the grievor verbal instructions for backing his train to couple with the tail end segment. Mr. Doiron was stationed at the site of the coupling and was responsible for advising the grievor by radio as to the number of car lengths remaining as he approached the coupling.

The undisputed evidence before the Arbitrator confirms that the grievor was then subject to Rule 564 which required him to operate at restricted speed, no more than 15 mph, with an ability to stop within half the visual range. Unfortunately, as is reflected in the download data, Mr. Browne reversed his movement at speeds in excess of what was permissible. At the half point distance his train was moving at 22 mph and in fact it increased to 23 mph. The grievor made no brake application as he reversed and as his movement approached the point of coupling he was told by Mr. Doiron that he was coming in too fast. At the eight car count Mr. Doiron exclaimed "We are going to hit hard." and began to run from the coupling point where he was located.

What followed was a very serious derailment. The cost of the damage to the derailed cars, which were numerous, was \$1,331,540. Fortunately, neither Mr. Doiron nor Mr. Verrino was injured.

Following a disciplinary investigation the Company concluded that the grievor was responsible for the derailment by reason of his excessive speed. As his disciplinary record already stood at fifty demerits, he was then dismissed. Brakeman Doiron received a reprimand while Conductor Verrino was assessed a two-day suspension.

The Union firstly asserts that the Company failed to provide the grievor with a fair and impartial investigation, contrary to article 71.2 of the collective agreement. It rests that allegation on what it characterizes as the difference in tone and the leading nature of certain of the questions which the investigating officer put to the conductor and brakeman, as opposed to the questioning of the grievor. Having reviewed the material, I cannot sustain that argument. There can obviously be a great variety of phrasings of questions which can be put during a disciplinary investigation. Having reviewed the instant file, I am not satisfied that there was anything unfair or undue in the manner in which the three employees were questioned by the investigating officer. Consequently, no violation of article 71.2 is disclosed in the circumstances.

The Union also argues what it characterizes as the discriminatory treatment of the grievor as opposed to his brakeman and conductor and stresses his relatively short experience as a locomotive engineer. While it is not disputed that Mr. Browne had completed the full course of locomotive training, the trip here under examination appears to have been his third assignment as a locomotive engineer, albeit he was relatively familiar with the territory.

The Arbitrator cannot sustain these arguments of the Union. As a fully qualified locomotive engineer the grievor was responsible to observe all operating rules and to handle his train with the requisite care and caution. In fact, what the evidence discloses, is that he entirely disregarded the speed limit at which he was to operate over a

relatively short distance, moving the head end segment of his train in a reverse direction at a speed which quickly reached 22 mph. To aggravate matters, he undertook that movement without any brake application whatsoever. In the result, by the time his workmates were able to see the speed at which the head end segment of the train was approaching the coupling point, it was too late to avoid the inevitable. Their involvement does not, in my view, compare to his.

The grievor is not a long term employee, having been hired in 2005. On two prior occasions he was discharged for serious operating errors, including one collision and derailment, although both of those discharges were reduced to suspensions. At the time of the incident here under examination his discipline record stood at fifty demerits.

In the circumstances, I can see no basis upon which to reverse the Company's decision. Even accepting that the grievor's second suspension is presently under grievance, it should be noted that that event did not contribute to the fifty demerit count on his record. The grievor therefore knew, or reasonably should have known, that under the Brown System of discipline any serious infraction on his part with respect to operating his train would result in the most serious of disciplinary consequences. On the whole of the material before me I do not consider that the Company's decision to terminate the grievor's employment was excessive or without just cause. Nor can I find, in the overall record, mitigating factors which would suggest a substitution of penalty in these circumstances.

For all of the foregoing reasons the grievance must be dismissed.

October 15, 2012

**(signed) MICHEL G. PICHER**

ARBITRATOR