

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4145**

Heard in Montreal, Wednesday 10 October 2012

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal the assessment of 25 demerits to Locomotive Engineer E. Buchan for: “your violations of CN’s Locomotive Engineer’s Manual, CROR Rule 33 and exceeding the 50 mph limitation of speed restricted equipment during your tour of duty April 25, 2010”, and his subsequent suspension and discharge for accumulation of demerits.

UNION’S STATEMENT OF ISSUE:

On April 25, 2012, Mr. Buchan was the assigned locomotive engineer on train L54641-25. Subsequent to his tour of duty the Company downloaded Mr. Buchan’s units and noted alleged violations of CN’s Locomotive Engineer’s Manual and CROR Rules 33 and 106. Subsequent to an investigation Mr. Buchan was assessed 25 demerits, a suspension and, as a result of an accumulation of demerits, was discharged.

The Union contends that the discipline is unwarranted and excessive and that the Company did not take into account the mitigating circumstances surrounding the influences complicating the train handling. The Union also contends a number of violations of the provisions of article 86 and Addendum 122.

The Union requested the Company reconsider the discipline assessed and resulting discharge and either expunge or reduce the discipline and compensation Mr. Buchan for all loss of wages and benefits.

The Company disagrees with the Union’s contentions.

**FOR THE UNION:
(SGD.) T. MARKEWICH
FOR: GENERAL CHAIRMAN**

There appeared on behalf of the Company:

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| K. Morris | – Sr. Manager, Labour Relations, Edmonton |
| D. Brodie | – Manager, Labour Relations, Edmonton |
| D. Van Cauwenbergh | – Director, Labour Relations, Toronto |
| J. Newton | – General Manager, Operations, Winnipeg |
| R. Anderson | – Trainmaster, Winnipeg |

There appeared on behalf of the Union:

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| K. Stuebing | – Counsel, Toronto |
| B. Willows | – General Chairman, Edmonton |
| C. Finch-Field | – Vice-General Chairman / Local Chairman, Winnipeg |
| E. Buchan | – Grievor |

AWARD OF THE ARBITRATOR

As a preliminary matter the Union submits that the grievor was denied a fair and impartial investigation in relation to his alleged rule violations relating to over-speed and the improper application of his independent brake in his handling of train SL546 on the Carberry and Rivers Subdivisions on April 25, 2012. The Union alleges that the grievor was denied a fair and impartial investigation on the basis that the Company had pre-judged his actions and determined, in advance of his investigation, that he would be discharged.

The evidence tendered before the Arbitrator does not sustain that allegation. At most, what emerges from the evidence is that there was a discussion between Trainmaster Randy Anderson and Union officer Brett McKimm as well as a separate conversation with Local Chairman Clayton Finch-Field. I am satisfied that on a close examination of those conversations that the most that would have been said by Mr. Anderson, upon learning that the grievor was facing a further disciplinary investigation with some fifty demerits on his record, that the culminating incident “might put him over

the edge.” I do not find the Union’s allegation that Mr. Anderson communicated that a decision had already been taken is made out on the evidence before me.

The material before me confirms that, as disclosed by a download of his locomotive’s event recorder, the grievor committed several rules violations in the operation of his train. Specifically, on three separate occasions he operated his train at excessive speed, registering 29 mph in a 25 mph zone, 33 mph in another 25 mph zone and 54 mph while pulling cars not intended to travel in excess of 50 mph. The speeding infractions lasted some seventeen minutes, in broken periods, over a total distance of in excess of ten miles. The event recorder also disclosed that on three separate occasions the grievor applied his independent brake at speeds in excess of 15 mph as a means of slowing his train, contrary to the rules.

Following a disciplinary investigation the grievor, whose disciplinary record stood at fifty demerits prior to this culminating incident, was assessed twenty-five demerits and discharged for the accumulation of demerits.

As the Company characterizes it, the gravamen of the grievor’s offence was not merely that he exceeded the speed limits, but that the locomotive download indicated that he failed to operate his train with a sufficient degree of planning and foresight. In that regard its representative notes that the download does not show the grievor making adjustments in the operation of his train in advance of areas where its weight might be anticipated to cause increases in speed, particularly on downhill grades. On the

grievor's behalf the Union stresses that his train was not equipped with dynamic brakes, and his options for train control were to that extent limited.

There can be no doubt but that the grievor did commit repeated speeding infractions during the operation of his train, and that he did improperly apply the independent brake on some three separate occasions when his movement was travelling at or in excess of twenty miles per hour. Those actions were all clearly in violation of operating rules identified above in the statement of issue. The only issue is the appropriate measure of discipline in all of the circumstances.

At the time of his termination the grievor had accumulated twenty-four years of service. He had only one rules violation on his record as of 1999, although further rules violations appear in 2009, 2010 and 2011. On the whole, however, the grievor's record does not disclose a pattern of serious or cardinal rules infractions causing events such as derailments or collisions. While I do not agree with the Union's submission that this is a case for the application of article 86.9 of the collective agreement, which keeps an employee in active service pending the outcome of arbitration for a discharge prompted by a minor offense, and agree with the Company that the speeding infractions here under examination are serious, I am not persuaded that the termination of the grievor was justified in all of the circumstances. I accept, as a mitigating factor, that the weight of the grievor's train and the terrain over which he was travelling did make train handling difficult, a fact that was not assisted by the absence of dynamic brakes. In my view this is a case for an appropriate substitution of penalty.

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. His disciplinary record shall continue to stand at fifty demerits.

October 15, 2012

(signed) MICHEL G. PICHER
ARBITRATOR