

**CANADIAN RAILWAY OFFICE OF ARBITRATION**

**CASE NO. 4150**

Heard in Calgary, Tuesday, 13 November 2012

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION**

**AND GENERAL WORKERS UNION OF CANADA**

**EX PARTE**

**DISPUTE:**

30 demerits marks assessed B. Reynolds for failing to wear proper footwear in the winter conditions on January 3, 2012 as per general notice DST-046.

**UNION'S STATEMENT OF ISSUE:**

It is the Union's position that the Company failed to take into consideration the mitigating factors in this case and that discipline to discharge was excessive and unwarranted.

The Company denied the Union's allegations.

**FOR THE UNION:**

**(SGD) R. FITZGERALD**

**NATIONAL REPRESENTATIVE**

There appeared on behalf of the Company:

R. Campbell – Manager, Labour Relations, Winnipeg  
R. Bateman – Director, Labour Relations, Toronto  
H. VonSemmler – CN Mechanical Supervisor, Diesel Shop, Edmonton  
R. Emond – Shop Manager, Edmonton  
P. Payne – Manager, Labour Relations, Edmonton  
D. Brodie – Manager, Labour Relations, Edmonton  
D. Crossan – Manager, Labour Relations, Prince George

There appeared on behalf of the Union:

R. Fitzgerald – National Representative, Toronto  
R. Shore – Regional Representative, Edmonton  
B. D. Reynolds – Grievor

## AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor suffered a fall in icy conditions which resulted in a three day absence by reason of the injury which he suffered. Following an investigation the Company assessed thirty demerits against the grievor for failing to wear proper footwear, discipline which resulted in his termination.

The fundamental question to be addressed is whether the grievor knew, or reasonably should have known, that safety footwear, in the form of anti-slip “spikies” which could be placed onto his work boots was a mandatory requirement which he failed to observe. The material before the Arbitrator confirms that on November 22, 2007 the General Manager of the Prairie Region issued General Notice DST-058. That directive stated:

When walking conditions are icy, please ensure a pair of spikies are attached to your winter boots. (they are now a PPE requirement).

If you do not have a pair of spikies see your Trainmaster and he/she will issue you a set.

Closer to the incident here under review, on November 23, 2011 the General Manager for the Alberta Division issued General Notice DST-046 which stated, in part:

The use of anti-slip “Spikies” footwear is mandatory on the Alberta Division during wet snow or icy conditions and/or when instructed by a supervisor.

The material before the Arbitrator further confirms, without substantial contradiction, that during pre-job briefings employees are regularly reminded of the importance of wearing the appropriate safety gear, including the cleated spikies in slippery conditions while working in and around yards and shops.

A management memo placed in evidence records that in late September of 2011 Mr. Reynolds had communicated that he did not intend to use the anti-slip cleats, finding it too great a burden to take them on and off. It appears that at a safety briefing he was warned by two supervisors that he was to wear the anti-slip footwear or risk discipline. There can be little doubt but that the grievor was well aware of the Company's expectation that anti-slip spikies were to be worn in slippery conditions.

Notwithstanding, the grievor was apparently not wearing them on January 3, 2012. On that day apparently sometime after the grievor's work tour of duty commenced, rain fell, resulting in extreme icy conditions. It is in that circumstance, while not wearing the safety cleats, that the grievor suffered a fall and injury. Following a disciplinary investigation, the Company assessed thirty demerits against the grievor, which resulted in his discharge.

The Arbitrator can well appreciate the Company's concern and frustration with the grievor's apparent reluctance to wear the safety gear. I am satisfied that his failure to secure a pair of spikies, which would have been available to him in a timely fashion if he had simply sought to obtain them, did represent a degree of negligence and failure of duty on his part which would properly attract the assessment of discipline. The sole issue in this case, in my view, is the appropriate measure of discipline in all of the circumstances.

There are mitigating factors of some consequence to consider. While the grievor did not have a positive disciplinary record, he nevertheless was an employee of long service. Hired in July of 1980, he was in his thirty-first year of service and some two years from retirement eligibility when the assessment of thirty demerits resulted in his discharge.

I am satisfied that in all of the circumstances, while the grievor must appreciate the seriousness of his error and the importance of respecting the Company's safety regulations and the use of safety equipment, the substitution of a serious penalty as an alternative to discharge is not inappropriate. The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for any wages and benefits lost. The thirty demerits assessed against his record shall be removed from his record and the period between his termination and reinstatement shall be recorded as a suspension.

19 November 2012

**(original signed by) MICHEL G. PICHER**  
ARBITRATOR