

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 4159

Heard in Calgary, Thursday, 15 November 2012

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the assessment of discipline and subsequent discharge of Conductor E. Leonty.

JOINT STATEMENT OF ISSUE:

On January 14, 2011, the grievor was assessed 25 demerit points "for failing to conduct a sufficient job briefing resulting in your movement travelling past the derail at the east end of the Bulk track ... while working as a conductor on December 6, 2010 at Elk Island." A subsequent form 104 was issued on the same date advising "you have been dismissed from Company service for accumulation of demerits."

It is the Union's position that the dismissal and discipline is unwarranted and excessive in all circumstances, with consideration to significant mitigating factors.

The Union requests that Conductor Leonty be reinstated without loss of seniority and benefits and that he be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the arbitrator sees fit.

The Company disagrees with the Union's contentions and denies the Unions request.

FOR THE UNION:

FOR THE COMPANY

(SGD) D. OLSON
GENERAL CHAIRMAN

(SGD). M. THOMPSON
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

A. Becker – Labour Relations Officer, Calgary
M. Thompson – Manager, Labour Relations, Calgary

There appeared on behalf of the Union:

M. A. Church – Counsel, Toronto
D. Olson – General Chairman, Calgary
D. Fulton – Vice-General Chairman, Calgary
W. McCotter – Local Chairman, Edmonton
E. Leonty – Grievor

AWARD OF THE ARBITRATOR

There can be no doubt on the material before me that the grievor clearly violated his duty of care owed to the Company by causing the derailment of a car during his tour of on December 6, 2010. The record confirms that while working as conductor responsible for the switching of cars at Elk Island, Alberta, the grievor removed the padlock of a derail but subsequently failed to align the derail so as to allow the car being switched to pass over it. That oversight on his part caused a derailment of the car.

Following a disciplinary investigation the Company terminated the grievor, in substantial part having regard to his prior disciplinary record which involved a significant number of rule violations for which he was disciplined, including two similar infractions in the previous twelve months, in the form of running over a blue flag and running through a switch. As reflected in the notice of termination, the grievor's discharge was based on two separate infractions: failing to conduct a sufficient job briefing and the negligent movement of the rail car over the derail, causing the derailment.

In the Arbitrator's view, if the facts ended there the Company's position would be well justified. The record discloses that the grievor has an extensive record of rules violations and had a record which stood at forty-five demerits at the time of the culminating incident.

There are, however, mitigating factors raised by the Union. Its evidence, regrettably not provided to the Company in a timely fashion, confirms that the grievor

has suffered from a sleep disorder. I am satisfied, based on the documents before me, that that condition was corrected following the grievor's termination. He has also apparently been diagnosed and corrected for hormonal and thyroid problems , although the material before me falls short of confirming that those might have contributed to a loss of concentration on his part. Perhaps most significantly, the grievor has twenty-three years of service with the Company. While I appreciate the Company's concern, I am satisfied that it is not inappropriate to afford the grievor one last chance to demonstrate that he can perform work safely and in accordance with all operating rules.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for any wages or benefits lost. The 25 demerits shall be removed from his record and a suspension shall be substituted for his period out of service.

November 19, 2012

signed
MICHEL G. PICHER
ARBITRATOR