

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4161

Heard in Calgary, Thursday 15 November 2012
and Tuesday 11 December 2012

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION

DISPUTE:

Dismissal of E. Scott.

JOINT STATEMENT OF ISSUE:

By way of Form 104 dated December 6, 2011, the grievor, Mr. Scott, was assessed 30 demerits for (1) failure to condition the brakes of his Rail Lifter machine, (2) failing to maintain control of his machine and (3) making contact with another vehicle. At the same time, the grievor was issued another Form 104 advising him that he was dismissed from Company service for an accumulation of demerits. A grievance was filed.

The Union contends that: **1.)** The grievor is a long service employee; **2.)** Mitigating factors existed that should have served to reduce the amount of discipline assessed; **3.)** The grievor's dismissal was unfair and unwarranted in the circumstances.

The Union requests that the grievor be reinstated into Company service forthwith, without loss of seniority and with full compensation for all losses incurred.

The Company denies the Union's contentions and declines the Union's request.

FOR THE UNION:
(SGD.) Wm. BREHL
PRESIDENT

FOR THE COMPANY:
(SGD.) M. MORAN
MANAGER, LABOUR RELATIONS

On Thursday, 15 November 2012, there appeared on behalf of the Company:

W. Scheuerman	– Labour Relations Officer, Calgary
M. Moran	– Manager, Labour Relations, Calgary
M. Chernenkoff	– Labour Relations Officer, Calgary

D. Cote – Labour Relations Officer, Calgary
R. Dadwal – Manager, Track Renewal

And appeared on behalf of the Union:

Wm. Brehl – President, Ottawa
D. Brown – Counsel, Ottawa

On Tuesday, 11 December 2012, there appeared on behalf of the Company:

W. Scheuerman – Labour Relations Officer, Calgary
M. Moran – Manager, Labour Relations, Calgary
M. Chernenkoff – Labour Relations Officer, Calgary
D. Cote – Labour Relations Officer, Calgary
R. Dadwal – Manager, Track Renewal

And appeared on behalf of the Union:

Wm. Brehl – President, Ottawa
D. Brown – Counsel, Ottawa
M. McCann – Witness, Tweed
C. Dalton – Witness, Mission

AWARD OF THE ARBITRATOR

It is not disputed that the grievor's rail lifter machine collided with a truck at a level crossing. Mr. Scott's account of events is that the brakes of the machine failed, and that he was in fact unable to stop.

Upon a review of the evidence, including an extensive explanation by witnesses from both parties with respect to the hydraulic system which controls the braking of the rail lifter machine, I am satisfied, on the balance of probabilities, that the collision was not in fact occasioned by a failure of the brake system, but rather was in substantial part attributable to inattention on the part of Mr. Scott.

It is true, as the Company stresses, that the grievor has a less than enviable disciplinary record, including prior incidents of collisions. However, I am satisfied that the length of the grievor's service, which is twenty-three years, is a mitigating factor

which would suggest that the grievor should be afforded a last chance to demonstrate that he can perform his duties safely and with due attention.

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, and without loss of seniority.

December 17, 2012

(signed) MICHEL G. PICHER
ARBITRATOR