

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4171

Heard in Montreal, January 10, 2013

Concerning

CANADIAN PACIFIC

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the termination of Locomotive Engineer J. Macoffio effective December 16, 2011.

JOINT STATEMENT OF ISSUE:

On November 29, 2011, Locomotive Engineer Marcoffio's crew's train was involved in a collision with rolling stock on the Mountain Subdivision. Following an investigation into the incident, on December 16, 2011, Locomotive Engineer Marcoffio was assessed 50 demerits for "failing to ensure equipment was properly secured and verbal confirmation of same and for failing to remain at the scene of a Critical Safety Rule Incident, resulting in the uncontrolled movement of CP421611, loaded flat car, and contact with rolling stock and inability to make timely investigation account leaving the scene". Locomotive Engineer Marcoffio was dismissed for accumulation of demerits.

**FOR THE UNION:
(SGD.) D. ABLE
GENERAL CHAIRMAN**

**FOR THE COMPANY:
(SGD.) A. BECKER
LABOUR RELATIONS OFFICER**

There appeared on behalf of the Company:

| | |
|-------------|--|
| A. Becker | – Labour Relations Officer, Calgary |
| M. Thompson | – Manager, Labour Relations, Calgary |
| K. Sali | – Superintendent, Kootenay Division, Calgary |
| E. Tyminksi | – Labour Relations Officer, Calgary |

There appeared on behalf of the Union:

| | |
|--------------|----------------------------------|
| M. Church | – Counsel, Toronto |
| D. Able | – General Chairman, Calgary |
| G. Edwards | – Vice General Chairman, Calgary |
| J. Daley | – Local Chairman, Revelstoke |
| D. Fulton | – Vice General Chairman, Calgary |
| J. Marcoffio | – Grievor |

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that Locomotive Engineer Marcoffio bears some responsibility for a runaway flat car. It is common ground that on November 29, 2011 the grievor and his workmate, Raymond Stockford, were responsible for storing a flat car loaded with rail panels in Track 6 in the yard at Hill, on the Mountain Subdivision. While it was Conductor Stockford who attended to the car, it is common ground that he did not apply any hand brake to it nor did Mr. Stockford and the grievor conduct a push pull test to confirm that the flat car was secure in its position. Additionally, it is not disputed that the grievor made no attempt to confirm verbally with Conductor Stockford that he had in fact applied hand brake to the flat car.

Shortly after it was placed in Track 6, the car in fact rolled free, in a direction opposite from where the grievor was working. Fortunately it was seen by the members of another crew who alertly put their own locomotive into motion so as to allow them to couple their locomotive to the free rolling flat car.

Mr. Marcoffio, who was still working at the time of that event, was not aware that the car had rolled free. After Mr. Stockford had learned of it from a member of the other crew, upon returning to the locomotive after completing other work, Mr. Stockford shared that news with Mr. Marcoffio. Unfortunately, neither of them reported the incident at that time, nor did they remain at the scene, as would normally be required by the

rules. While they indicated that they had intended to report the incident upon their return to Field, the incident was in fact reported to supervisors by the other crew.

Following a disciplinary investigation the grievor was assessed 50 demerits and dismissed for the accumulation of demerits.

There can be no doubt but that the incident here under review was extremely serious. The carelessness of Conductor Stockford in making no real attempt to secure the flat car with a hand brake, was compounded by the grievor's obvious failure to verify that he had done so, as is specifically required by G.O.I. Section 15 which states, in part: "single car must ALWAYS be left with the hand brake applied. ...crew members are responsible to INQUIRE and CONFIRM with each other that equipment is left in accordance with these instructions."

The Arbitrator is not impressed by the grievor's account that he assumed that his Conductor had secured the car with the hand brake and had also assumed that he had tested the effectiveness of the hand brake by letting the slack roll out. The simple fact is that he made no effort to verify whether the car was properly secured. Moreover, when he later learned of the event he likewise made no effort to report it nor did he remain at the scene for whatever assistance might be afforded in the execution of an immediate investigation by management.

Unfortunately the grievor does not present with a positive disciplinary record. He was twice previously involved in collisions. The first, in 1998 involved his train passing a restricting signal at excessive speed and colliding with the trailing car of a stationary train, resulting in substantial damage to equipment. More recently, in November of 2009 Mr. Marcoffio operated his train through a stop signal, which resulted in the collision with another train at Redgrave, BC on October 30, 2009. That resulted in the assessment of 55 demerits against him on November 27, 2009. Two years following that very serious incident the grievor's negligence contributed to creating the extremely hazardous situation of the runaway flat car at Hill which, fortunately, did not result in any derailment, injury or property damage.

Upon a careful review of the facts of this case and the grievor's prior record, I am compelled to the regrettable conclusion that the Company is correct in its assessment that the grievor's negligence and lack of care did justify the termination of his services. It appears from the record that Mr. Marcoffio has engaged in extremely serious rules violations in the past and that the Company's efforts to apply progressive discipline to correct his errors has had no meaningful success. In the circumstances I can see no basis for a substitution of penalty. For the foregoing reasons the grievance must be dismissed.

January 14, 2013

(signed) MICHEL G. PICHER

ARBITRATOR