

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4177**

Heard in Montreal, February 12, 2013

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAILWAY CONFERENCE**

**DISPUTE:**

Appeal of assessment of 20 demerits to Conductor M. Spain, resulting in his discharge for accumulation of demerits.

**JOINT STATEMENT OF ISSUE:**

On July 18, 2012, Conductor Spain was issued 20 demerits for "your violation of GOI 8 4.5 in Brantford yard while working on L580311" resulting in discharge for accumulation of demerits in excess of 60 demerits.

The Union contends that the investigation was not conducted in a fair and impartial manner per the requirements of the Collective Agreement. For this reason, the Union contends that the discipline is null and void.

The Union further contends that there is no cause for discipline in the circumstances, or in the alternative, that the penalty is excessive.

The Union requests that the discipline be removed entirely from Conductor Spain's record, and that Conductor Spain be made whole for any losses incurred as a result of this discipline. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company does not agree with the Union's position.

**FOR THE UNION:**  
**(SGD.) J. Robbins**  
**General Chairperson**

**FOR THE COMPANY:**  
**(SGD.) S. Fusco**  
**Manager Labour Relations**

There appeared on behalf of the Company:

S. Fusco	– Labour Relations Manager, Toronto
D. Gagne	– Senior Labour Relations Manager, Montreal
M. Marshall	– Senior Labour Relations Manager, Toronto
S. Mumby	– Trainmaster, Oakville

D. Larouche	– Labour Relations Manager, Montreal
P. Payne	– Labour Relations Manager, Calgary
V. Paquet	– Labour Relations Manager, Toronto

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
J. Robbins	– General Chairman, Sarnia
J. Lennie	– Vice General Chairman, Port Robinson
G. Gower	– Vice General Chairman, Belleville
J. King	– Local Chairman, Halifax
E. Page	– Local Chairman, Toronto
B. Johnson	– Local Chairman, Halifax
A. Wilkinson	– Vice Local Chairman, Capreol
M. Spain	– Grievor, Toronto

### **AWARD OF THE ARBITRATOR**

The Company terminated the grievor, an employee of twenty seven years' service, because he walked within five feet of a stationary car when crossing the track. It is not disputed that the proper clearance would have been twenty five feet, although the grievor gave as an explanation that as he rounded the cut of cars to cross the track at the Brantford station his intention was to open the knuckle on the last car. It appears that in fact the knuckle was open and that there was no operation for him to perform. Following a formal investigation conducted on July 16, 2012 the grievor was assessed twenty demerits for his violation of GOI 8.4.5 while working as a conductor in a yard assignment at Brantford on July 12, 2012.

Do the facts disclosed justify the termination of an employee with twenty-seven years of service? I think not. While it does appear clear that the grievor violated the requirement to give twenty-five feet of clearance from a standing cut of cars when crossing the track, the fact that the cars were obviously well secured and that the

grievor intended to verify whether the end knuckle was opened is, in my view, a mitigating factor to be taken into consideration.

The fact remains that the grievor's prior disciplinary record is not enviable and includes two prior discharges for which he received a reduction of penalty, once by an award of this Office and on a later occasion by agreement of the parties. At the time of the incident here under review his record stood at fifty-five demerits.

On the whole, however, given the length of the grievor's service and the nature of the culminating incident, I am satisfied that this an appropriate case for a substitution of penalty, albeit subject to a severe measure of discipline.

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. The twenty demerits shall be removed from his record, and the time between his termination and reinstatement shall be recorded as a suspension for his violation of GOI 8.4.5.

February 18, 2013

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MICHEL G. PICHER  
ARBITRATOR