

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4178**

Heard in Montreal, February 12, 2013

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAILWAY CONFERENCE**

**DISPUTE:**

Appeal of assessment of 15 demerits, 7-day suspension, 10 demerits and 25 demerits, respectively, to Foreman W. Johnson, resulting in his discharge for accumulation of demerits.

**JOINT STATEMENT OF ISSUE:**

In the course of mid 2011 through mid 2012, Foreman Johnson was assessed disciplinary penalties for varying alleged infractions, as follows. On October 15, 2011, Foreman Johnson was assessed 15 demerits for allegedly “not being dressed and ready for your 16:00 assignment Y50911-30 on September 30<sup>th</sup>, 2011.” On December 22, 2011, Foreman Johnson was assessed a 7-day suspension for alleged “Failure of CROR General Rule A (ii) specifically not having your operating manual up to date with the proper documents and supplements when reviewed on November 8, 2011.” On July 25, 2012, Foreman Johnson was assessed 10 demerits for alleged “Violations of CROR General Rule A (iii) while working as conductor on L50911-05.” Finally, on July 25, 2012, Mr. Johnson was issued a further 25 demerits for “Your delay to assignment L50911-05 and being away from the work area while working as conductor on L509 July 5, 2012.” Foreman Johnson’s employment was subsequently terminated for accumulation of demerits. The Union contends that, in respect of each of the above assessments of discipline, including his dismissal, that the penalty assessed to Foreman Johnson is unwarranted and excessive in all of the circumstances. In addition, the Union contends that the assessment of discipline violates, *inter alia*, Article 94 of the *Canada Labour Code*. The Union requests that each of the above disciplinary penalties be ordered removed from Foreman Johnson’s record and that Mr. Johnson be ordered reinstated and made whole for his losses. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit. The Company disagrees and denies the Union’s request.

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

**FOR THE COMPANY:**  
**(SGD.) J. Liepelt**  
Senior Vice-President – Eastern Region

There appeared on behalf of the Company:

A. Daigle	– Labour Relations Manager, Montreal
D. Gagne	– Senior Labour Relations Manager, Montreal
M. Marshall	– Senior Labour Relations Manager, Toronto
J. Darby	-- Labour Relations Manager, Toronto
P. Payne	-- Labour Relations Manager, Edmonton
S. Fusco	– Labor Relations Manager, Toronto
D. Larouche	-- Labour Relations Manager, Montreal
D. Gagne	– Senior Labour Relations Manager, Montreal
D. VanCauwenbergh	– Director, Labour Relations, Toronto

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
J. Robbins	– General Chairman, Sarnia
J. Lennie	– Vice General Chairman, Port Robinson
J. King	– Local Chairman, Halifax
E. Page	– Local Chairman, Toronto
A. Wilkinson	– Vice Local Chairman, Capreol
W. Johnson	– Grievor, Halifax

### **AWARD OF THE ARBITRATOR**

This Arbitration concerns four heads of discipline assessed against yard foreman William Johnson. The first involves the assessment of fifteen demerits for not being dressed and ready for work at his on duty time on September 30, 2011. The record confirms that in fact the grievor was on the telephone, apparently dealing with a report of a safety hazard which would have a potential impact on himself and his crew during the course of his work assignment that day. Upon a close review of that incident, I am satisfied that a reprimand should be substituted for the fifteen demerits assessed against the grievor. While it is true that it was the grievor's obligation to be dressed and ready for work at commencement time, I consider the fact that he was dealing with a safety hazard report on the telephone, and therefore was late changing into his work clothes, is a mitigating factor to be considered.

The next discipline involves a seven day suspension assessed against the grievor for failing to have a complete operating manual in his possession. It appears that the manual was issued to him on September 14, 2009 and that when it was inspected by Supervisor Parsons during an audit on November 8, 2011 it was found to be lacking updates to pages five and six of the Dangerous Goods Section. In fact, however, as he related during the disciplinary investigation, Mr. Johnson had been provided with photocopies of the two pages in question by Trainmaster Yeadon. While he had those in his possession, they were not within the framework of his operating manual. That was soon corrected when he was given the colored page inserts shortly thereafter.

The Arbitrator is not persuaded that the grievor in fact did all that he could with respect to procuring the necessary copies of the pages which were found to be missing from the body of his operating manual. I am therefore not inclined to disturb the seven day suspension which was levied against him.

The next head of discipline assessed against Mr. Johnson was ten demerits for allegedly crossing a track at an insufficient distance from a stationary cut of rail cars. In my view the discipline there assessed must, again, be found to be excessive. The grievor explained that he believed that he had the clearance of twenty five feet from standing cut of cars, when in fact it was eighteen feet. I am satisfied that in these circumstances a reprimand would have been sufficient to remind the grievor of the importance of respecting the distance from the equipment that he should have kept. On that basis this aspect of the grievance is allowed, in part, with the ten demerits to be removed from the grievors record and a written reprimand to be substituted.

The final assessment of discipline relates to twenty-five demerits imposed against the grievor for having left the workplace without authorization and having consequently caused some delay in operations. This incident occurred on July 5, 2012, the same day as the incident in relation to the grievor having crossed a track in improper proximity to standing rail equipment. It appears that later during the tour of duty the grievor and his crew encountered a broken knuckle on a car. As they would be prevented from working on that car until a carman arrived to repair it, the grievor apparently decided that they should proceed to a Tim Horton's restaurant located across the street while awaiting the repair. It is common ground that they had no authorization to leave the workplace and that no attempt was made by the grievor to advise management of the fact that the four crew members were in fact leaving the property.

I am satisfied that as a general matter the assessment of twenty-five demerits would not be inappropriate for the grievor's action. While it may be, as the Union asserts, that the Tim Horton's in question was a place where employees commonly took lunch breaks, a concern must naturally arise where, as in the instant case, there was apparently no scheduled meal break which they were taking and, perhaps most importantly, there was no attempt on the part of the grievor or his crew mates to obtain any permission to leave the premises or to advise as to their circumstances and whereabouts.

In my view, given that the fact the grievor has twenty-seven years of service, the assessment of twenty-five demerits and his discharge were an excessive response to what occurred. That said, I must agree with the Company that the temporary abandonment of the workplace by the grievor, without notice or permission, was a serious matter worthy of substantial discipline. In the circumstances, I am satisfied that the rehabilitative element in the instant case will be satisfied by substituting a suspension and by removing the demerits from the grievor's record and reinstating him subject to a substantial period of suspension.

The grievance is therefore allowed, in part. The Arbitrator directs that the twenty-five demerits assessed against Mr. Johnson be removed from his record, and that he be reinstated into employment without loss of seniority and without compensation for wages and benefits lost. The time between the grievor's termination and reinstatement shall be recorded as a suspension for his abandoning the workplace without authorization on July 5, 2012. Additionally, as noted above, the assessments of fifteen and ten demerits shall be removed from his record with written reprimands to be substituted.

February 18, 2013

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MICHEL G. PICHER  
ARBITRATOR