

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4181

Heard in Montreal, February 13, 2013

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal of discharge assessed to Conductor J. Stewart on August 10, 2012, and time out of service from July 22, 2012 to date of discharge being recorded as a suspension without pay or benefits for violations of CRO Rule 104(c), causing derailment of two (2) cars TILX 290056 and OLGX 29112. GOI Section 8, 4.6.2 failing to comply with safety rules concerning crossing over, under or between rolling stock. GOI Section 8, 12.9 failing to comply with safety rules concerning crossing between coupled equipment. GOI Section 8, 3.1 general disregard for Responsibility For Safety. As well as attempts to mislead the Company and conceal the true cause of the derailment at Mirror, Alberta, all while working as Conductor on L55051 22 on July 22, 2012.

COMPANY'S STATEMENT OF ISSUE:

On July 22, 2012, the grievor was ordered as the Conductor for his assignment, L55050 22 Road Switcher at Mirror, Alberta. During switching operations two cars were derailed. Based on initial inspection of the derailment site, couple with discussions between Company Officers and the grievor, the cause of the derailment remained unknown. Accordingly, the Company undertook the effort to obtain a copy of Mirror yard camera video tape in the event it may have captured the events leading up to the derailment. The video tape clearly identified serious contradictions in the grievor's recollection of events as well as serious safety violations allegedly being perpetrated by the grievor. The Company conducted an investigation of the incident and determined that the grievor had violated CRO Rule 104(c), GOI Section 8, 12.9, GOI Section 8, 4.6.2, GOI Section 8, 3.1 and did attempt to mislead the Company by concealing the true cause of the derailment, and subsequently assessed discharge. The Union contends that the Company's use of a video taken from a camera in Mirror Yard is an incursion into the privacy of the crew, and contrary to Section 5(3) of the Personal Information Protection and Electronic Documents Act, S.C. 2000 c.5, and this violation prescribes that the discipline be declared *void ab initio*. It is the Union's position that the grievor be reinstated and his record be made whole. The Company disagrees with the Union's contentions.

**FOR THE UNION:
(SGD.)****FOR THE COMPANY:
(SGD.)**

There appeared on behalf of the Company:

P. Payne	– Labour Relations Manager, Edmonton
K. Morris	– Senior Labour Relations Manager, Edmonton
D. Vancauwenbergh	– Director Labour Relations, Toronto
T. Brown	– General Manager, Montreal
J. Darby	– Labour Relations Associate, Toronto

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
R. Hackl	– General Chairman, Calgary
J. Stewart	– Grievor, Edmonton

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the grievor was responsible for a number of rule violations, as outlined in the statement of dispute. In particular, during switching operations on a Road Switcher at Mirror Alberta on July 22, 2012 errors committed by Conductor Stewart resulted in the derailment of two cars. Among other things, it appears that he threw a switch which was under a car and, as recorded on yard video tape, he crawled under a cut of cars between coupled equipment, violating a very fundamental safety rule contrary to GOI Section 8, Item 12. 9.

The Company's decision to discharge the grievor was motivated , in substantial part, by its belief that he attempted to mislead Assistant Superintendent Jeff Sokolan who responded to the derailment, essentially relating to him that he did not know what might have caused the derailment. A subsequent review of the videotape clearly confirmed that the grievor was in fact was responsible for what had happened. Based

on the grievor's violations of the Rules and what had perceived to be his attempt to mislead the Company he was terminated.

While the Arbitrator can appreciate the Company's perspective, there are mitigating factors of importance to be considered. With close to twenty-six years of experience and at the age of fifty-nine years of age, the grievor is presently eligible for pension, although he would suffer a lifetime reduction in pension if his termination should stand. Additionally, over the grievor's record of long service there have not been many incidents of rules violations, although his record is not perfect in that regard. Nor am I satisfied that the grievor truly intended to deceive his supervisor, as it in fact appears that it was Mr. Stewart himself who suggested viewing the video tape of the incident.

On the whole, I am satisfied that there is reason to believe that the grievor can realize a significant rehabilitation by the application of a lesser penalty. The grievance is therefore allowed in part. The Arbitrator directs that the grievor be reinstated into his position forthwith, without compensation for any wages or benefits lost, and without loss of seniority.

February 18, 2013

MICHEL G. PICHER
ARBITRATOR