

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

CASE NO. 4183

Heard in Montreal, February 14, 2013

Concerning

CANADIAN PACIFIC RAILWAY

And

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

DISPUTE:

Discipline assessed to, and dismissal of, Mr. Jordan McGregor.

JOINT STATEMENT OF ISSUE:

On September 21, 2010, the grievor was served with two Forms 104. One notified the grievor that he was assessed with thirty demerits for an alleged rules violation that results in a collision. The second notified the grievor that he was being dismissed from Company service for an accumulation of demerits. A grievance was filed.

The Union contends that mitigating factors existed that should have been served to reduce the amount of discipline that was assessed. The discipline assessed to, and the dismissal of, the grievor was unfair and unwarranted in the circumstances.

The Union requests that the grievor be reinstated into Company immediately without loss of seniority and with full compensation for all financial losses incurred as a result of this matter.

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

FOR THE UNION:
(SGD.) W. Brehl
President

FOR THE COMPANY:
(SGD.) B. Lockerby
Labour Relations Officer

There appeared on behalf of the Company:

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

There appeared on behalf of the Union:

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

AWARD OF THE ARBITRATOR

The record establishes that on August 23, 2010 the grievor was operating a Hi-rail truck on the Kaministiquia subdivision with the Manitoba Steel Gang. After the performance of some work he was sitting in his truck as the last piece of equipment on the gang, waiting further work assignments. It appears that as he waited another Hi-rail truck entered the track and pulled up behind him, albeit without making any radio broadcast of its presence. It appears that the driver of that truck walked past the grievor and gave him a salutation.

Sometime later the grievor was instructed to back his truck to a ballast regulator located several miles away in the reverse direction from the position of the grievor's truck. The grievor immediately backed his truck, promptly colliding with the Hi-rail truck parked behind him, a vehicle of whose presence he was entirely unaware. The grievor relates that while he looked in his left side mirror he saw nothing and assumed that the way behind him was clear. The position of the Company was that it was incumbent upon the grievor to clearly ensure that there was no obstruction on the track behind him before moving his Hi-rail truck. In light of the grievor's prior record, and his relatively short service, the Company assessed thirty demerits, which coupled with the thirty-five demerits on the grievor's record, resulted in the termination of his services.

Upon a review of the materials, and with the fullest appreciation for the good efforts of the Union to minimize the incident, I cannot find mitigating factors which would justify any reduction of penalty in the case at hand. As stressed by the Company, hired

in 2005, the grievor did not have extensive long service with the company. Most unfortunately, his prior record included two prior collisions involving damage to a switch stance while the grievor was operating a ballast regulator.

I am compelled to agree with the Company that the grievor's disciplinary record over a short period of employment is worthy of substantial concern. His two prior on the job collisions, as well as the culminating incident which is the subject of this award, give substantial pause as to the grievor's fitness to work in a highly safety sensitive environment. On the whole I am satisfied that the Company was justified in assessing thirty demerits in the case at hand, and that this is not an appropriate case for a substitution of penalty. For the foregoing reasons the grievance must be dismissed.

February 18, 2013

MICHEL G. PICHER
ARBITRATOR