

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

**CASE NO. 4186**

Heard in Calgary March 12, 2013

Concerning

**CANADIAN NATIONAL RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal on behalf of Conductor C. Maschek of the assessment of the discipline of 15 demerit marks for "Improperly detrainning and improperly riding equipment during tour of duty as Yard Helper on June 23, 2010.

**Ex PARTE STATEMENT OF THE COMPANY:**

On June 23, 2010, Mr. Maschek was assigned as the Assistant Conductor on an 07:00 hours West Tower Yard Assignment in Winnipeg, and was determined to have committed the above-noted infractions.

The Company conducted an investigation of the incident and determined that Conductor Maschek had failed to comply with Company Operating instructions, and was deserving of the discipline of 15 demerit marks.

The Union appealed the discipline of 15 demerit marks assessed to Mr. Maschek on the basis that the assessment of discipline was unnecessary and should be expunged and replaced with a letter reflecting the fact that Mr. Maschek was coached and counselled on the proper work procedures.

The Company disagrees with the Union's contentions.

**FOR THE UNION:**

**FOR THE COMPANY:**

**(SGD.) D. Brodie**

**Manager Labour Relations, Edmonton**

There appeared on behalf of the Company:

D. Brodie	– Manager Labour Relations, Edmonton
K. Morris	– Senior Manager Labour Relations, Edmonton

There appeared on behalf of the Union:

D. Elickson	– Counsel, Toronto
R. Hackl	– General Chairman, Calgary
R. Thompson	– Vice General Chairman, Calgary

## AWARD OF THE ARBITRATOR

Upon a review of the evidence the Arbitrator is satisfied that the grievor was in violation of the rules, as alleged by the Company. Firstly, it appears that while riding equipment he was stationed in a seated position on the steps leading to the cab of a locomotive. That is plainly contrary to GOI, section 8, paragraph 12.4 which deals with riding equipment and states, in part:

“When riding equipment, employees MUST ALWAYS:

- Unless it is the trailing car and the movement, ride the side ladder on the leading end of equipment in the direction of travel.

There could be no doubt but that the grievor violated that rule.

The next aspect of the rule violations concerns the grievor’s method of detraining. It is common ground that paragraph 12.5 of GOI, section 8 required the grievor to lower his trailing foot to the ground first, stepping away with the other foot. In fact Mr. Maschek was observed to first place his leading foot on the ground, an obviously dangerous move.

The only issue is the appropriate measure of discipline. Given the length of the grievor’s service, and the fact that this discipline involved a first infraction, I am satisfied that 10 demerits would have been sufficient to bring home to the grievor the importance of observing the rules which he did fail to follow. I therefore direct that the discipline assessed against the grievor be reduced to 10 demerits, placing his total demerits at 50.

March 18, 2013

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MICHEL G. PICHER  
ARBITRATOR