

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

**CASE NO. 4187**

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 assessed for "Failure to comply with CRO Rule 115, not obtaining point protection when shoving cars into C030, at 23:30, while working as an Assistant Conductor on assignment

**Ex PARTE STATEMENT OF ISSUE OF THE COMPANY:**

On April 12, 2012, Mr. Maschek was assigned as the Assistant Conductor on the YLTS 30S1, yard assignment in Winnipeg, and was determined to have committed the above-noted rules infraction.

The Company conducted an investigation of the incident and determined that Conductor Maschek had violated the rule noted and was deserving of discipline, which subsequently discharged him for accumulation of demerit marks.

The Union contends that the Company has assessed extreme discipline and discharged Mr. Maschek, and that he ought to be reinstated and made whole.

The Company disagrees with the Union's contentions.

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

**FOR THE COMPANY:**  
**(SGD.) D. Brodie**  
**Manager Labour Relations**

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**

There can be no doubt but that the grievor did violate CROA 115. The material confirms that while performing yard switching on April 12, 2012 at Winnipeg, while assigned as Assistant Conductor, Mr. Maschek shoved a cut of cars into track C030 in Symington yard. It is common ground that from the position at which he was standing on the ground the grievor did not have a clear view of the track into which he was directing cars. His intention was to have the yardmaster serve as point protection by insuring that the way was clear. To that end Mr. Maschek called the yardmaster. However, when the latter did not answer the grievor nevertheless continued to shove cars into track C030, a fact which was observed by trainmaster Ryan Denny.

I am compelled to agree with the Company that this was a serious rules infraction. In effect, the grievor was shoving blind into a track without knowing the physical condition of the area into which he was directing a number of rail cars. The avoidance of that risk and danger is precisely the reason for CROR 115.

What, then, is the appropriate measure of discipline? The Company assessed 15 demerits against the grievor which, when added to the 55 demerits which then stood on his record, resulted in his termination. However, in the Arbitrator's view there are mitigating factors to be taken into account. Firstly, the grievor's period of employment, which commenced in 1994, has been fraught with extensive periods of absence for non-culpable medical reasons. He was in fact shortly back from a leave of absence at the time of the events here under examination. While I must agree with the Company that

the grievor's prior record is not exemplary, as it does contain some prior rules violations, I am not satisfied that an outcome short of discharge cannot be fashioned, without undue prejudice to the employer.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated forthwith, without compensation for any wages or benefits lost. The time between his termination and reinstatement shall be recorded as a suspension for his violation of CROR 115 and his disciplinary record shall continue to stand at 50 demerits.

March 18, 2013

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MICHEL G. PICHER  
ARBITRATOR