

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4190**

Heard in Calgary, March 13, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAILWAY CONFERENCE

DISPUTE:

Appeal of the issuance of 50 demerits and discharge to Conductor Mitchell Bohonos.

JOINT STATEMENT OF ISSUE:

On December 21, 2011, the Grievor was assessed 50 demerits as described on form 104 "For your detrainning moving equipment, a Cardinal Safety Rule Violation (second occurrence), and for your use of an operating lever to entrain, detrain and cross over equipment, a Cardinal Safety Rule Violation, when switching traffic at Evraz customer facility at Red Deer, Alberta, while employed as Conductor on train A24-24 on November 24, 2011: violations of Safety Rules and Safe Work Procedures Transportation Field Operations Employees T-11, Safety Rules and Safe Work Procedures Transportation Field Operations Employees T-*, Operating bulletin ASA-055-08, CROR General Rule A (i), (III), (vi), (viii), 106, General Notice and GOI Section 14, item 1.6." As a result of this assessment of discipline, Conductor Bohonos was dismissed for accumulation of demerits.

The Union contends that the assessment of 50 demerits and dismissal of Mr. Bohonos is unjustified, unwarranted and excessive in all of the circumstances. The Union requests that Mr. Bohonos be reinstated without loss of seniority and benefits, and that he be made whole for all lost earnings. 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.) D. Olson
General Chairperson

FOR THE COMPANY:
(SGD.) A. Becker
Labour Relations Officer

A. Becker
M. Thompson
M. Chernenkoff

– Labour Relations Officer, Calgary
– Manager Labour Relations, Calgary
– Labour Relations Officer, Calgary

There appeared on behalf of the Union:

D. Elickson – Counsel, Toronto

D. Olson	– General Chairman, Calgary
D. Fulton	– Vice General Chairman, Calgary
D. Able	– General Chairman, Calgary
B. DeMarco	– Local Chairman, Red Deer
M. Bohonos	– Grievor, Red Deer

AWARD OF THE ARBITRATOR

The material before me confirms that the grievor did in fact violate the rules cited by the Company. Prior to the incident in question, when Conductor Bohonos was observed working on November 24, 2011 his record stood at 20 demerits. In fact those demerits were assessed for detrainning moving equipment, contrary to the rule which was then in effect, a rule which has apparently since been changed by the Company, albeit after the grievor's termination.

In essence there are two elements to the misconduct of the grievor. The first is his detrainning from moving equipment, and the second is the fact that he improperly used the operating lever of a car as a foothold while climbing on to the car, something which was plainly contrary to safe practice. The Arbitrator can appreciate the Company's concerns with respect to the safety dimensions of the grievor's departure from what was then the rule in respect of detrainning, as well as his inappropriate method of entraining using a car's operating lever. The substantial issue is whether these two infractions, one of which did involve the repeat of conduct for which he had previously been disciplined, merited the assessment of a total of 50 demerits resulting in the grievor's termination.

It is true that Mr. Bohonos is not a long service employee, having some 6 years' service. The full record before the Arbitrator, however, does not suggest that the grievor is an incorrigible or habitual offender. As stressed by counsel for the Union, between 2007 and 2011 Mr. Bohonos worked for some 4 years without attracting any discipline, maintaining a clear record for that period of time. While I do not disagree with the Company that the repeat infraction of Mr. Bohonos' detrainning from moving equipment must be viewed as serious, although that action would no longer be in violation of any rule, I am persuaded that the whole of the evidence before me suggests that this an appropriate case for a substitution of penalty. The grievor must nevertheless appreciate that the instant award is fashioned as a second chance for him to demonstrate that he can work in a safe manner, in conformity with all basic safety rules.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for wages and benefits lost. The 50 demerits assessed against him shall be removed from his record and the period between his termination and reinstatement shall be recorded as a suspension, with his record to be returned to the level of 20 demerits.

March 18, 2013

MICHEL G. PICHER
ARBITRATOR