

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4195

Heard in Montreal, April 9, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

UNITED STEEL WORKERS TC LOCAL 1976

DISPUTE:

Appeal of the assessment of 40 demerit points assessed to the record of Mr. Y. Auclair and the resulting dismissal due to accumulation.

JOINT STATEMENT OF ISSUE:

On November 12, an investigation was conducted with Mr. Auclair in connection with his alleged sleeping during his shift on November 5, 2012. As a result of this investigation, the Company assessed Mr. Auclair with 40 demerits for sleeping on duty, which resulted in his dismissal for accumulation of demerits under the Brown System of discipline. The Union denies Mr. Auclair was sleeping and therefore requests that Mr. Auclair be reinstated and compensated for all loss of salary and benefits. The Company disagrees with the Union's contentions and denies the Union's request.

FOR THE UNION:
(SGD.) N. Lapointe
Union Advisor

FOR THE COMPANY:
(SGD.) D. Burke for R. Hartline
General Manager Operations – Eastern Region

There appeared on behalf of the Company:

D. Burke	– Labour Relations Officer, Calgary
B. Sly	– Director, Labour Relations, Calgary
P. Giosi	– Trainmaster Industrial, Montreal
A. Pompizzi	– Superintendent Operations, Montreal

There appeared on behalf of the Union:

S. Hadden	– President, USW Local 1976, Montreal
Y. Auclair	– Grievor, Cateauguay

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor, Crew Bus driver Yves Auclair, was observed in an isolated location in the St. Luc Yard, in Montreal in a reclined position in the driver's seat of his vehicle, with his eyes closed. His vehicle was observed from a distance by Trainmaster Patrick Giosi and Superintendent of Operations Al Pompizzi.

The evidence of Mr. Giosi is that he drove his vehicle around a building to finally park it approximately a vehicles' distance away from the grievor's parked crew bus. As he could not see anyone seated in the vehicle, he proceeded to an adjacent trailer, the hump trailer, to see whether anyone might be inside. He found no one there and as he left the trailer he noticed that in fact Mr. Auclair was lying back in the driver's seat of his van. Mr. Giosi then proceeded to the crew van, asking Mr. Pompizzi to join him. According to Mr. Giosi's account, which I accept as accurate, he observed Mr. Auclair reclined in his driver's seat, with his eyes closed for several seconds before doing anything further. He then tapped on the driver's side van window, which caused Mr. Auclair to open his eyes. In Mr. Giosi's judgement the grievor appeared startled and dazed.

When the trainmaster signaled to the grievor to lower his window, the latter in fact forgot that he did not have the keys in the ignition and fumbled with the control. Finally realizing that he needed to start the vehicle, he did so and opened the window. When Mr. Giosi asked Mr. Auclair whether he was sleeping the latter responded that he was not, and that he had simply reclined to better observe the passing trucks and trains.

Following a disciplinary investigation the Company assessed 40 demerits to Mr. Auclair, resulting in the termination of his services for the accumulation of demerits. At the time of the incident the grievor's record stood at fifty-five demerits. In fact he had been returned to work following his discharge and was then employed under the terms of an employment contract which involved him transferring from another bargaining unit. By any interpretation, that was generally intended as a last chance opportunity. It appears that previously the grievor had been employed as a rail-traffic controller, a position in which he had been disciplined for sleeping on duty in October 2003. He was also disciplined for sleeping on duty while employed as a bridge operator serving the St. Lawrence Seaway in October 2010.

The record would indicate that the grievor has what can fairly be described as an abysmal disciplinary record. It would appear that some of his past difficulties may have been related to his condition as an alcoholic, an illness which fortunately appears to have been brought under control. The fact remains, however, that at the time of the current incident the grievor stood at fifty-five demerits, and was the subject of a last chance work contract. He was in obvious peril in the event of any additional discipline being assessed against him.

The grievor denies having slept on the job. The Arbitrator has substantial difficulty with the credibility of that assertion. Firstly, it does not appear disputed that his vehicle effectively had no business being parked in the isolated section of St. Luc Yard where it was discovered by the two supervisors. Nor is there any credible explanation from the

grievor as to why he turned off his vehicle, reclined his seat and closed his eyes for what appears to have been a fairly substantial period. Additionally, I accept the evidence of Mr. Giosi to the effect that the grievor seemed dazed when the Trainmaster tapped on the his vehicle's window. I am also inclined to agree with the supervisor that it seems strange that the grievor would not have heard the supervisor's vehicle pulling up close to his, or the doors of either the other vehicle or the hump trailer being opened and closed as Mr. Giosi went about his investigation of the site. On the balance of probabilities, I am compelled to conclude that the grievor was in fact sleeping, as alleged.

I find it difficult, if not impossible, to identify any mitigating factors which can assist the grievor in this case. As noted above, his prior disciplinary record is extremely negative, including as it does two dismissals and two prior occasions of discipline for sleeping while on duty.

Upon a close examination of the record and the facts of the instant case, which in my view can only be aggravated by what I consider to be the grievor's lack of candor as to his situation when he was discovered by his supervisors, I can find no compelling basis for a reduction in the discipline in the case at hand. For these reasons the grievance must be dismissed.

April 15, 2013

MICHEL G. PICHER
ARBITRATOR