

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4196**

Heard in Montreal, April 10, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED STEELWORKERS LOCAL 2004

DISPUTE:

Demotion of Jason Little (PIN 14823 or a period of 2 years to the position of Track Maintainer.

JOINT STATEMENT OF ISSUE:

On July 6, 2012, the grievor was demoted from his position of Assistant Track Maintenance Foreman as per Company form 780: "demotion for a minimum of 2 years to a position of Track Maintainer "note" before allowing employee to return to a position of authority, it must be reviewed by Regional Assistant Chief (cannot perform any duties of a Foreman, Assistant Foreman, Flagging Foreman or EIC), for violation of GEI 2.0 job briefing and failure to perform 110." The Union filed a grievance regarding this matter in accordance with Article 18, Appendix H and Article 1.5 of Agreement 10.1. The Union has requested that the grievor be immediately reinstated with full redress. The Union and the Company have met to discuss this grievance in Joint Conference on October 24/12 and January 30/13 and the Company disagrees with the Union's contentions and has declined the Union's grievance.

FOR THE UNION:
(SGD.) M. Piché
USW Staff Representative

FOR THE COMPANY:
(SGD.) S. Blackmore
Senior Manager Labour Relations

There appeared on behalf of the Company:

S. Prudames	– Labour Relations Officer, Toronto
S. Grou	– Senior Labour Relations Manager, Montreal
J. D. Machado	– Assistant Chief Locomotive Engineer, Toronto
L. Waller	-- Observer, Toronto

There appeared on behalf of the Union:

M. Piché	– USW Staff Representative, Toronto
T. Cotie	– Chef Steward, Sudbury
M. Green	– PMO, Cobourg
G. Colli	– Chef Steward, Winnipeg
J. Little	– Grievor, Newcastle

AWARD OF THE ARBITRATOR

Upon a review of the evidence I am satisfied that the grievor was liable to discipline. The evidence confirms that on June 26, 2012 the grievor was assigned as Assistant Track Maintenance Foreman, being “employee in charge” at a construction project at the Via station in Cobourg Ontario. He was then responsible to coordinate the activities and movements of a number of contractors and their employees, including the obligation of conducting a proper job briefing at the commencement of the day.

On the day in question the grievor was observed by two supervisors who were conducting a safety blitz. They noticed that the grievor was in fact in his truck, apparently filling out paper work, during the passage of two and possibly three trains. Mr. Little failed to exit his truck and conduct a CROR 110 pull-by inspection of the train. The supervisors also overheard radio communications involving the grievor during which proper radio protocols were not used.

When the supervisors, Engineering Manager Rick Cameron and Assistant Regional Chief of Engineer Joe Machado, approached the grievor in his truck and spoke with him they determined that he did not prepare any written job briefing material and was in fact filling out the related job briefing forms after the briefing was itself concluded. It is not disputed that the grievor conducted a job briefing without himself having the benefit of any written briefing sheet or entry in his own job briefing book. I am

satisfied that that way of proceeding was plainly improper and rendered the grievor subject to discipline.

The record confirms that at the time Mr. Little would have in fact been previously demoted, and had also received twenty demerits for the failure to conduct a proper job briefing on July 13, 2011.

I am satisfied, based on the material before me, that the grievor did not conduct a proper job briefing and did not make use of Risk Assessment Forms while doing so. I am also compelled to agree with the Company that there was no good reason for the grievor not to suspend his activities in his truck and comply with CROR Rule 110 to inspect passing trains at the time in question.

In the result, I am satisfied that the grievor did make himself liable to discipline. Given the nature of the infractions committed as well as the grievor's prior record, I am satisfied that the assessment of demotion for a minimum of two years to the position of Track Maintainer was not inappropriate and should not be disturbed.

Nor can I sustain the Union's allegation respecting the application of paragraph 18.2 (c) of the collective agreement. It is common ground that in fact the grievor was not provided with a written notice to appear for investigation, as contemplated in that article. Rather, he was verbally notified of the investigation some six days in advance. Significantly, when he and his Union representative appeared at the investigation, when he was asked if he had been properly notified and was prepared to proceed, he

answered in the positive. There was, in fact, no procedural objection taken either by the grievor or by his Union representative at the time of the investigation. In the circumstances I am compelled to accept the suggestion of the Company that the grievor and the Union waived the right to now challenge the sufficiency of the notice provided to the grievor. To accept the Union's position at this time would be substantially prejudicial to the Company and would, in the overall, be unduly technical, given the fact that the grievor himself acknowledge having received adequate notice of the investigation.

For all of the foregoing reasons the grievance must be dismissed.

April 15, 2013

MICHEL G. PICHER
ARBITRATOR