

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4199**

Heard in Montreal, April 11, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

DISPUTE:

Discipline and Dismissal assessed to Mr. Kelly Robbins.

JOINT STATEMENT OF ISSUE:

On September 28, 2012, the grievor, Mr. Kelly Robbins, was issued two Forms 104. The first assessed him with 40 demerits for a Cardinal Rule Violation. The second advised him that he was being dismissed for an accumulation of demerits. The Union grieved. The Union contends that, the grievor is a very long service employee. The discipline assessed was excessive and unwarranted in the circumstances. The Union requests that the grievor be reinstated into Company service forthwith without loss of seniority and with full compensation for all wages lost as a result of this matter. The Company denies the Union's contentions and declines the Union's request.

FOR THE UNION:
(SGD.) W. Brehl
President

FOR THE COMPANY:
(SGD.) M. Moran
Manager Labour Relations

There appeared on behalf of the Company:

W. Scheuerman	– Labour Relations Officer, Calgary
D. Cote	– Labour Relations Officer, Calgary

There appeared on behalf of the Union:

W. Brehl	– President, Ottawa
D. Brown	– Counsel, Ottawa

AWARD OF THE ARBITRATOR

It is not disputed that the grievor committed a serious safety infraction on July 26, 2012. He then allowed employees under his direction to perform work at a location where they had no track occupancy permit and were therefore in a position of some hazard. When the grievor was advised of the error which had occurred he failed to issue the emergency broadcast which he should have, although it appears that he did take steps to immediately remove the employees from their place of peril.

Following an investigation the Company determined that the grievor should be assessed forty demerits. As his previous discipline stood at twenty demerits, that resulted in his termination for the accumulation of sixty demerits. The Company's decision was influenced, in substantial part, by the fact that the grievor had been involved in a similar infraction in 2010 for which he had previously been assessed thirty demerits.

The central issue in the case at hand is the appropriate measure of discipline. While the Arbitrator can appreciate the Company's concern for a second offence involving the critical issue of a track occupancy violation, it is incumbent upon this Office to consider all factors, including mitigating factors, in assessing the question of the ultimate disciplinary outcome.

In considering that question a significant fact is that the grievor entered Company service in 1984. His twenty-eight years of service must be viewed as factor to be taken into consideration in considering whether the Arbitrator's discretion should be exercised to fashion an alternative disciplinary outcome. While I appreciate that the grievor's record is less than exemplary, I do believe that his long service merits his being given a second chance, albeit in conditions that are fashioned to protect the Company's interest. It is my view that it is not inappropriate to consider the continuation of the grievor's employment, albeit in a position which he has no responsibility for holding track occupancy permits.

The grievance is therefore allowed, in part. The Arbitrator directs that Mr. Robbins be reinstated into his employment forthwith, subject to a demotion from the position of Extra Gang Foreman. The Company shall be at liberty to assign the grievor to such position as it deems appropriate in which he will have no responsibility for holding or enforcing track occupancy permits, for such a period of time as the Company in its discretion considers to be appropriate. The grievor must appreciate that the conclusion herein is fashioned as a last chance opportunity for him to demonstrate that he can work safely and in a manner consistent with all applicable rules. The grievor's reinstatement shall be without compensation or any wages or benefits lost and without loss of seniority.

April 15, 2013

MICHEL G. PICHER
ARBITRATOR