

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4214

Heard in Edmonton, June 12, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge of Michael Booth for accumulation of demerits and the final incident in which he was issued 20 demerits for his failure to follow the instructions of a company officer while employed as a conductor on October 21, 2012.

JOINT STATEMENT OF ISSUE:

Mr. Booth was a conductor in Belleville and worked for CN since February 1989. On October 21, 2012 Mr. Booth was working as the Conductor on M37231 21 at MacMillian Yard. He was requested by a Trainmaster to give the engineer the car count and then refrain from giving the engineer the car count after the movement had travelled half the distance so that an efficiency test could be performed. Mr. Booth refused. He subsequently advised the engineer over the radio to be careful because he was being efficiency tested.

The Union alleges that it was a violation of GOI 8.12.2 for Mr. Booth not to repeat the car movements and that the discipline issued was unjustified, unwarranted, discriminatory and excessive.

The Company disagrees. In light of the circumstances of the incident, the Company asserts that discharge is warranted.

FOR THE UNION:
(SGD.) J. Robbins
General Chairman

FOR THE COMPANY:
(SGD.) V. Paquet
Labour Relations Manager

There appeared on behalf of the Company:

V. Paquet	– Manager, Labour Relations, Toronto
D. VanCauwenbergh	– Director Labour Relations, Toronto
P. Payne	– Manager, Labour Relations, Edmonton
J. Sokolan	– Assistant Superintendent, Edmonton

There appeared on behalf of the Union:

M. Church	– Counsel, Toronto
J. Robbins	– General Chairman, Sarnia

J. Lennie

– Vice-General Chairman, Port Robinson

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor, Conductor Michael Booth, was approached at the commencement of his tour of duty by assistant Trainmaster Delroy Lowe who offered to give him a ride to his work location in MacMillian Yard. He was then to double over his train by coupling to a cut of cars, communicating by radio with his locomotive engineer.

On route to the worksite Mr. Lowe instructed Mr. Booth that when he was to verbally instruct his locomotive engineer over the radio to back his train towards the coupling he should initially give his conductor the correct car count, but should not, as he would normally do, give another car count in half the range of the movement. The test being set up by Mr. Lowe was to effectively determine whether the grievor's locomotive engineer, Tim Murphy, would in fact stop his train having heard no further direction from his conductor after moving through half the range of movement.

Mr. Booth refused. It was his personal feeling that he should not be compelled to involve himself with a supervisor in setting up an efficiency test of a fellow employee. The evidence records that Mr. Booth then exited Mr. Lowe's vehicle and communicated with locomotive engineer Murphy to advise him that an efficiency test might be conducted. Given that communication, Mr. Lowe proceeded no further with the efficiency testing of Mr. Murphy. Following the incident, an investigation was conducted after which the grievor was assessed 20 demerits for failing to follow the instructions of

a supervisor. As the grievor's discipline record then stood at 55 demerits, the discipline in question resulted in the termination of his employment.

The Arbitrator has substantial concern with the facts of the instant case. The obligations of a conductor in communicating a reverse movement to a locomotive engineer is governed by GOI Section 8, item 12.2 "Procedures for Switching by Radio" which reads, in part, as follows:

1. Positive identification must be established between the employee controlling the movement and the employee operating the locomotive.
2. Establish the direction the controlling locomotive is facing and communicate the direction to be travelled in relation to the front of the controlling locomotive.
3. Distance to be traveled must be given with each communication. Instructions received must be repeated. (Increments of less than 2 car lengths need to be repeated).
4. The movement must stop at once if, after traveling half the distance of the last communication, no further instructions have been received.
5. Doubt as to the meaning of an instruction or for whom it is intended must be regarded as a stop signal.

In effect, assistant Trainmaster Lowe wanted to set up a situation whereby locomotive engineer Murphy would have no further verbal instruction from his conductor beyond the initial instruction that he was ten car lengths from the coupling that was to be made. He effectively wanted to see whether Mr. Murphy would stop his train at half the distance if he received no further verbal instruction from conductor Booth.

The Union submits that what was occurring, in effect, was an instruction from Mr. Lowe to the grievor to effectively breach the rules and expectations represented by GOI Section 8 item 12.2, something the grievor was reasonably entitled to refuse to do. The Union's interpretation of the rule is that the conductor is to make multiple communications to the locomotive engineer, indicating the car distance to the coupling and that there could be no compliance with the rule if the conductor deliberately gave no further information to his locomotive engineer.

I agree with the Union's reading of the rule. The phrase "each communication" reflects the expectation that a conductor will make a number of car length distance communications to this locomotive engineer. Indeed, Mr. Lowe's instructions to the grievor was predicated on the understanding that he would. I am compelled to conclude that in fact the grievor was being asked to violate the overall intent of GOI Section 8, item 12.2 by not following the well-established practice of verbally communicating successive car lengths to the locomotive engineer to assist in the movement of the train towards the coupling point. In my view the purpose of paragraph 4 of the rule is to cover unforeseen circumstances, such as a possible radio failure, to ensure that the locomotive engineer does not in fact back up his train without clear ongoing communication with his conductor. In effect, Mr. Booth was being asked to depart from the rule or at a minimum from the best practice represented by the rule, in assisting his conductor in the backing of his train towards a coupling point over a distance of some ten car lengths.

From a strict standpoint, the Arbitrator cannot reject the position of the Company that the grievor in fact refused a direct order. I cannot, however, dismiss out of hand the submission of the Union that the circumstances at hand, being set up by an assistant Trainmaster of relatively short experience, caused the grievor a substantial concern, from the standpoint of being involved in the possible entrapment of a fellow employee. In my view there was as well the potential danger of a rough coupling or worse should the locomotive engineer not in fact stop his train in conformity with the rule.

This Office has a degree of concern with the method employed by assistant Trainmaster Lowe. A relationship of unqualified trust is essential between conductors and locomotive engineers in the highly safety sensitive operations for which they are jointly responsible. Mr. Lowe sought, effectively, to enlist the conductor to potentially entrap his locomotive engineer into a possible operating infraction. While such an infraction might have incurred no more than a counselling, it could have also resulted in discipline against the grievor's fellow worker. It should scarcely need elaborating that any negative consequence for locomotive engineer Murphy would have done little to enhance his relations with his conductor, whom he trusted to give him accurate radio communications to assist him in his train's movement.

What the instant case discloses are facts which cause concern on two levels. Firstly, this Office must question the advisability of enlisting an employee to set up the potential entrapment of another employee as part of an efficiency test. While it may be argued that it is simply an employee's duty to do what he or she is told, the

approach taken by the relatively inexperienced assistant Trainmaster in the instant case would effectively undermine the degree of trust which must operate between the members of a train crew. A dishonest or false communication could well result in strained relations between two employees who must work closely and trustingly together in the furtherance of safety sensitive operations. An aggravating factor in the instant case is the additional safety dimension of the possible rough coupling which might have resulted, particularly as it was occurring on a slight downhill grade. Additionally, even assuming, without finding, that the efficiency test would have been safe and legitimate in the circumstances at hand, it appears that the assistant trainmaster could have accomplished the same end without enlisting the involvement of the grievor, by using his own vehicle radio to effectively block any clear transmission from the conductor's radio to the engineer.

I accept the Union's submissions in that GOI Section 8 is established to further safe switching practices and that Mr. Lowe was effectively directing the grievor to depart from that rule. In the result, I am satisfied that the Company did not have just cause to assess any discipline against the grievor. Given the need for the grievor to switch safely and to maintain a relationship of unqualified trust with his locomotive engineer, I cannot find that he was insubordinate or derelict in refusing to follow a command from Mr. Lowe which would have effectively departed from the clear intention of GOI Section 8, the well-established safe practice among train crews and the expectation of accurate, clear and honest communication which must be an essential element of the grievor's working relationship with his locomotive engineer.

The grievance is therefore allowed. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and with compensation for all wages and benefits lost.

June 14, 2013

MICHEL G. PICHER
ARBITRATOR