

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4215

Heard in Edmonton, June 12, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAILWAY CONFERENCE

DISPUTE:

Appeal of the issuance of 45 demerits and discharge to Conductor Derrick Mulholland.

JOINT STATEMENT OF ISSUE:

On August 25, 2013, train 356-25 entered onto the south track past signal 56S without authority. Following an investigation into this incident, on September 17, 2012, Conductor Mulholland was assessed 45 demerits "for your failure to properly comply with the instructions contained in the CTC authority number 206 resulting in your train passing signal number 56S at Chuwhels and occupying the South Track without authority, while employed as Conductor on Train 356-25 operating on the Thompson subdivision on August 25, 2012." As a result of this assessment of discipline, Conductor Mulholland was dismissed for an accumulation of demerits.

The Union contends that the assessment of 45 demerits and dismissal of Mr. Mulholland is unjustified and excessive in all of the circumstances. The Union requests that Mr. Mulholland be reinstated without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. 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

There appeared on behalf of the Company:

M. Thompson	– Manager, Labour Relations, Calgary
D. Freeborn	– Director, Labour Relations Calgary

There appeared on behalf of the Union:

M. Church	– Counsel, Toronto
D. Olson	– General Chairman, Calgary
D. Fulton	– Vice General Chairman, Calgary
J. Linnel	– Local Chairman, Kamloops
D. Mulholland	– Grievor, Kamloops

AWARD OF THE ARBITRATOR

There can be no doubt but that the grievor was involved in a cardinal rules infraction in the operation of his train on the Thompson subdivision on August 25, 2012. The record confirms that at a signal and switch location where the grievor and his locomotive engineer were using a rule 564 authority to pass a stop signal, Mr. Mulholland was required to exit his locomotive and manually operate a switch. The instruction given to the grievor was to proceed past signal number 56S on the south track at Chuwhels and to cross over to the north track. In fact he simply lined the switch to allow his train to continue on the south track. Consequently, the grievor's movement proceeded over the south track for a distance of some two miles, obviously without any authority to occupy that track. It appears that it is only when the rail traffic controller realized the error that he then issued a new 564 authority to allow the grievor's train to be on the south track. Subsequently the grievor and his locomotive engineer were removed from service and, following a disciplinary investigation were each assessed 45 demerits. That resulted in the dismissal of Mr. Mulholland for the accumulation of demerits.

The Arbitrator is compelled to agree with the Company that what occurred was a serious cardinal rules offence creating an obviously dangerous situation which could have had potentially disastrous consequences.

The only issue in the case at hand is the appropriate measure of discipline. The grievor's disciplinary record stood at 35 demerits at the time. The Company submits that his extensive disciplinary record does not justify any adjustment in penalty in the instant

case. Counsel for the Union, however, stresses that the bulk of the grievor's prior disciplinary history relates principally to attendance issues, noting that he has received relatively little discipline over a thirty-two year career for any rules infractions.

In my view, a close scrutiny of the grievor's disciplinary record bears out that characterization. While it appears that the grievor's attendance difficulties, which resulted in multiple assessments of discipline against him and culminated in a specific contract of employment in 2010 which apparently improved his attendance, his record with respect to safety and operating rules must be recognized as relatively positive over his thirty-two year career. In these circumstances, I am satisfied that it is not inappropriate to give the grievor another chance, albeit subject to a relatively serious penalty.

In the result, the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for any wages and benefits lost.

June 14, 2013

MICHEL G. PICHER
ARBITRATOR