

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4227**

Heard in Montreal, July 11, 2013

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the termination of Marlene Kosheluk.

**THE UNION'S ExPARTE STATEMENT OF ISSUE:**

On September 26, 2007, Marlene Kosheluk was working as Locomotive Engineer Trainee on train 116-21. Following an investigation, on March 22, 2010 Ms. Kosheluk was discharged for "failing to ensure train 116-21 stopped prior to passing signal number 756, which was displaying a STOP indication and for failing to properly carry out your duties as a Locomotive Engineer Trainee resulting in your train colliding with the tail end of train 104-22 at Coldwell, during your tour of duty on September 26, 2007. A violation of the following rules, CROR General Notice, CROR General Rule A, item (i), (iii), (iv), (vi) and (viii), CROR Rule 34 and SSI to Rule 34, CROR Rule 35, CROR Rule 429, CROR Rule 106 (b) and (c), GOI-2 Section 16, item 1.1, GOI-2 Section 16."

The Union contends that Conductor Kosheluk's dismissal is unjustified, excessive and abusive in all of the circumstances, contrary to both the Collective Agreement and the Company's obligations under the *Canadian Human Rights Act*. The Union requests that the discipline be removed in its entirety, that Conductor Kosheluk be ordered reinstated forthwith without loss of seniority and benefits, and that she 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.) W. Apsey**  
**Vice General Chairperson**

**FOR THE COMPANY:**  
**(SGD.)**

There appeared on behalf of the Company:

M. Chernenkoff	– Labour Relations Officer, Calgary
D. Freeborn	– Director Labour Relations, Calgary
R. Hampel	– Counsel, Calgary
A. Becker	– Labour Relations Officer, Calgary

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
W. Apsey	– Vice General Chairman, Smiths Falls
B. Hiller	– General Chairman, Toronto
T. Tubman	– Local Chairman, Schreiber
B. Brunet	– Local Chairman, Montreal
M. Kosheluk	– Grievor, Schreiber

### **AWARD OF THE ARBITRATOR**

The record confirms that while working as a Locomotive Engineer Trainee on September 26, 2007 the grievor lost control of the breaking ability of her train which resulted in her train going through a stop signal and colliding with the rear-end of another movement, resulting in the derailment of a number of cars and some two million dollars in overall damage.

Following a disciplinary investigation she was terminated, having regard to a prior incident which involved her failing to identify and respect a signal and had resulted in the assessment of forty-five demerits against her. It is common ground, however, that at the time of the culminating incident her disciplinary record was free of any demerits.

The record confirms that the events surrounding the collision and derailment which resulted in her termination had a severe impact on the grievor who has subsequently required treatment for Post-Traumatic Stress Disorder, an ongoing condition which permanently restricts her from resuming work in road service. The position of the Union is that the Company should canvass other working alternatives to accommodate the grievor's condition.

The circumstances of the collision in which the grievor was involved were reviewed in the prior award of this Office in CROA 3768. In that case the Arbitrator dismissed the grievance against discharge filed by locomotive engineer Robert Speziale who was charged with supervising and training the grievor and who, by his own admission, became involved in daydreaming for an extensive period of time, disregarding the train handling difficulties being experienced by Ms. Kosheluk. I consider the involvement of Mr. Speziale to be a mitigating factor as regards the responsibility of the grievor who, it appears, was for the first time being required to bring her heavy train to a stop at the bottom of a relatively steep grade.

On the whole, I am satisfied that there is latitude for exploring the continuing employment of the grievor, albeit not in an operating capacity, and that it is incumbent on both parties to examine the possibilities of finding a suitable accommodation for Ms. Kosheluk.

The grievance is therefore allowed, in part. I direct that the grievor be reinstated into her employment forthwith, without compensation for any wages and benefits lost, with both parties to meet to explore the appropriate job possibilities and accommodation that can be made for the grievor. In any event, the grievor shall be reinstated to the payroll no later than sixty days from the date of this award.

July 12, 2013

---

MICHEL G. PICHER  
ARBITRATOR