

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4231

Heard in Montreal, September 10, 2013

Concerning

VIA RAIL CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The dismissal of Locomotive Engineer R. Whalen

JOINT STATEMENT OF ISSUE:

On January, 29, 2013, Mr. Whalen was required for service at 08:00 for a "Roustabout" shift. Prior to commencing work, Mr. Whalen had spoken to the WMC Supervisor and received instruction by virtue of the 'display board' as to the location of the equipment to be moved. Mr. Whalen was alleged to have moved equipment without authorization. Following an investigation Mr. Whalen was assessed 20 demerit marks "for the unauthorized movement of equipment at the Winnipeg Maintenance Centre (WMC) on January 29, 2013". Consequently Mr. Whalen was dismissed for accumulation of demerit marks.

The Union contends that the issuance of discipline resulting in the discharge of Mr. Whalen is unwarranted and excessive under the circumstances. The Corporation did not take into account the mitigating circumstances.

The Union requests that the discipline be removed from Mr. Whalen's disciplinary record and that Mr. Whalen be reinstated without loss of seniority and that he be made whole for all lost wages and benefits or in the alternative, that Mr. Whalen be allowed to retire with full benefits.

The Corporation submits that Mr. Whalen's actions contributed to a serious breach of safety when he moved the wrong equipment that for which he did not have the proper authority. Under the circumstances, the discipline assessed to Mr. Whalen is warranted and appropriate.

FOR THE UNION:
(SGD.) B. Willows
General Chairman

FOR THE COMPANY:
(SGD.) G. Sarazin
Senior Advisor, Labour Relations

There appeared on behalf of the Company:

G. Sarazin	– Senior Advisor, Montreal
K. Howard	– Supervisor, EM, Winnipeg
J. Bennett	– Manager Train Operations, Winnipeg

M. McAmmond – Senior Manager Operations, Kamloops
E. Houlihan – Director Employee Relations, Montreal

There appeared on behalf of the Union:

K. Stuebing – Counsel, Toronto
A. Stevens – Counsel, Toronto
B. Willows – General Chairman, Edmonton
B. Ermet – Vice General Chairman, Edmonton
R. Horn – Retired Local Chairman, Dawson
D. Bjornsson – Member, Winnipeg
R. Whalen – Grievor, Winnipeg

AWARD OF THE ARBITRATOR

There can be no dispute but that the grievor was involved in a serious operating error. On January 29, 2013 along with his workmate Mr. B. Vallis, Mr. Whalen received instructions to move Train # 693 as part of the “roustabout” shift to prepare that train for departure with a different crew.

In fact the train in question was on track M-11. However, when the grievor and Mr. Vallis left the office to go to their train they saw a train on a track M-9, the track from which train 693 usually departs. They boarded and commenced to operate that train in error. As they did not do a walk around of the locomotive they did not notice that in fact the train they were moving had power cables connected to a 480 volt Way Shore station. Having moved the train some four car lengths they pulled those cables from their connection before they were made to realize the error they had committed. In the result, they moved a train without authorization, on a track which they had no authorization to be working on. In fact Train 693 was stationed in track M-11.

There can be no question but that the grievor made himself liable to discipline. Mr. Whalen failed to perform a pre-departure inspection, a process which would have alerted him to the fact that he was dealing with the wrong train. He also failed to have in his possession a train safety inspection check list for the train on track M-09. Nor can the Arbitrator accept the Union's suggestion that the train on track M-09 should have been under blue flag protection. It was not under repairs or maintenance that would have required such protection.

At the time of the incident in question the grievor's disciplinary record stood at fifty demerits. The subsequent assessment of twenty demerits for Mr. Whalen's rules infractions on January 20, 2013 resulted in the termination of his services.

The grievor does not present a positive disciplinary record. He was dismissed in 2012 for his involvement in a collision at the Winnipeg station which caused injuries to employees and passengers. The incident here under examination occurred very shortly after the grievor's return to work following the decision of this Office in CROA&DR 4172.

I have difficulty seeing any responsible basis upon which the discipline in the case at hand should be reduced, at least in so far as reinstatement into active service is concerned. It appears, however, that the grievor would be entitled to retire with full benefits if he were restored to the payroll. Given Mr. Whalen's age and his more than forty-one years of service I do not consider that to be an unreasonable suggestion.

The grievance is therefore allowed, in part. The Arbitrator directs that Mr. Whalen be reinstated to the Corporations payroll on the condition that he undertake to immediately retire, with full access to such benefits as his status will allow.

September 16, 2013

MICHEL G. PICHER
ARBITRATOR