

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION  
CASE NO. 4239**

Heard in Montreal, September 12, 2013

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Dismissal of locomotive engineer Cathleen Blue.

**JOINT STATEMENT OF ISSUE:**

On March 13, 2012, following an investigation, Locomotive Engineer Blue was dismissed from Company service "for your failure to ensure a proper handbrake effectiveness test was conducted, which resulted in an uncontrolled movement and derailment of the TTPX 805145 in track WG09, a Cardinal Safety Rule Violation, for colluding in an attempt to mislead the Company with respect to the circumstances associated with this uncontrolled movement, and for abandoning your duties and leaving the workplace without proper authorization; thereby making yourself unavailable to participate in the requested post-accident/incident substance test: a violation of CROR 112 (a) & (b), GOI Section 14 Item 1.2 & 1.3 (a), CROR General Notice and CROR General Rule A (i), (ii), (iii), (iv), (ix) & (xii); while working as Locomotive Engineer on Assignment TG11-10 on February 10<sup>th</sup>, 2012 at Galt Yard."

The Union contends that Ms. Blue's discharge is unjustified, unwarranted and excessive in all of the circumstances. The Union requests that Ms. Blue be reinstated 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.) B. Brunet**  
General Chairperson

**FOR THE COMPANY:**  
**(SGD.) M. Thompson**  
Labour Relations Manager, Edmonton

There appeared on behalf of the Company:

D. Freeborn	– Director Labour Relations, Calgary
D. Guerin	– Director Operations Centre, Calgary
G. DeCiccio	– Senior Vice President, Calgary
B. Sly	– Director Labour Relations, Calgary
R. Baxter	– Locomotive Engineer, London

There appeared on behalf of the Union:

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|-------------|----------------------------------|
| A. Stevens  | – Counsel, Toronto               |
| B. Brunet   | – General Chairman, Montreal     |
| J. Campbell | – Vice General Chairman, Toronto |
| T. Sonier   | – Local Chairman, London         |
| C. Blue     | – Grievor, London                |

### **AWARD OF THE ARBITRATOR**

The Company makes a number of allegations against the grievor, the substance of which I am satisfied are made out. Firstly, it is not disputed that she failed to work with her crew to perform a proper hand brake effectiveness test on a car that was being cut off by her crew while switching cars in a yard setting. Notwithstanding her yard foreman and yard helper's application of the hand brake on the car in question, it rolled free and derailed. It does not appear disputed that the hand brake was defective. Clearly the incident could have been avoided by the grievor and her crew properly conducting a hand brake effectiveness test before releasing the car.

However the Company submits that the situation was aggravated by other events. In particular, it alleges that she colluded with her fellow workers in an attempt to develop a story to minimize the incident. Additionally, it alleges that following the incident, when she was directed to undergo a drug and alcohol test, she improperly left the work premises thereby making herself unavailable for the substance test.

The Union does not dispute that the grievor failed in her obligation with respect to the verifying the breaking effectiveness of the car in question. It submits, however, that the grievor did not engage in collusive activity in an attempt to mislead the Company

and it did not commit any impropriety by declining to involve herself in a substance test when she was advised that her father was in urgent need of her care, which prompted her to leave the work premises before the test could be taken.

With respect to the switching incident itself, the Arbitrator has some difficulty differentiating the responsibility of the grievor from that of her two work mates. It is common ground that each of them was ultimately assessed twenty-five demerits. It is also common ground that the grievor, who has twenty-six years' service, had only been disciplined twice previously in all of that time, and that her record stood at ten demerits at the time of the incident.

There can be no doubt that the grievor made every effort to contact Company officers, making a number of calls without success, to report the incident immediately. One of the calls was made to Road Foreman Richard Baxter. Inadvertently, having left a message on his phone, the grievor left her own cell phone open, as a result of which Mr. Baxter's telephone recorded the conversation which took place between the grievor and her Yard Foreman and Yard Helper immediately after the incident.

The Arbitrator has some difficulty with the Company's characterisation of that conversation as a form of collusion intended to mislead the Company. A careful review of the verbal exchange among the employees confirms the Union's characterisation of the conversation which was essential a review of what happened. Perhaps unfortunately, during the course of their conversation the grievor stated "Okay, so that's

the story, were sticking to that. OK.” The unchallenged fact is that the car in question had a defective hand brake. The facts discussed between the grievor and her two fellow employees are essentially accurate, to the extent that they did apply the hand brake fully and the car nevertheless rolled away. As noted above, they do not deny having failed to do a proper hand brake effectiveness test.

While the grievor’s case is relatively strong with respect to the actual switching incident, I have greater difficulty with respect to her leaving the premises, ostensibly to go to the hospital because she had been advised that her father had a heart attack, when she was asked to stay to undergo drug and alcohol testing. Her father was not in fact in the hospital and it does not appear disputed she had made a number of telephone calls to her family around the time of that incident. On the balance of probabilities, I’m inclined to accept the Company’s view that the grievor improperly avoided the drug and alcohol test she was scheduled to undergo. That fact alone, in my view, substantially distinguishes her ultimate disciplinary penalty from that assessed against her work mates.

What then is the appropriate penalty as concerns the grievor’s actions ? In my view, a substantial mitigating factor in the case at hand, notwithstanding the contrary view expressed by a Company officer at the hearing, is that twenty-six years of service by the grievor, with only two minor incidents of discipline on her record, constitutes an important mitigating factor to be considered. This is, in my view, an appropriate case for reinstatement, albeit not for compensation.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into her employment forthwith, without loss of seniority and without compensation for any wages or benefits lost. The passage in respect of alleged collusion in an attempt to mislead the Company shall be removed from the grievor's record.

September 13, 2013

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MICHEL G. PICHER  
ARBITRATOR