

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4248**

Heard in Montreal, October 9, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

**TEAMSTERS CANADA RAIL CONFERENCE
RAIL TRAFFIC CONTROLLERS**

DISPUTE:

Terry Phillips, RTC. assessed with 30 demerits for his failure to properly apply procedures as set forth in RTC Manual Item 730(a) and RTC Notice 11003, when a disabled train has crossing protection activated on February 14, 2013, and his subsequent discharge for accumulation of 80 demerit marks.

JOINT STATEMENT OF ISSUE:

On February 14, 2013, Train M31031-13 initiated an emergency radio broadcast from mile 246.5 Kingston Sub that their train was stopped. Mr. Phillips was the RTC for that territory and he failed to follow the procedures set out in RTC Manual Item 730(a) and RTC Notice 11003: specifically failing to question the crew as to whether they had any public crossings blocked.

The Union maintains that the discipline assessed to Mr. Phillips and the resulting dismissal was excessive and a result of his being on the "focus list" and therefore he was discriminated against by being subject to greater discipline than other RTC's, and therefore he must be returned to service with full seniority and made whole for all lost wages and benefits.

The Company denies the Union's contentions and declines the Union's request.

FOR THE UNION:
(SGD.) S. Brownlee
General Chairperson

FOR THE COMPANY:
(SGD.) S. Blackmore
Senior Manager Labour Relations

There appeared on behalf of the Company:

S. Blackmore	– Senior Manager, Labour Relations, Edmonton
G. Curtis	– Superintendent, Regional Operations, Toronto
J. Wynne	– RTC Officer, Toronto

There appeared on behalf of the Union:

K. Stuebing	– Counsel, CaleyWray, Toronto
S. Brownlee	– General Chairperson, Stony Plain

P. Hammond – Vice Local Chairperson, Toronto
M. Boucher – Vice General Chairperson, Montreal
T. Phillips – Grievor, Toronto

AWARD OF THE ARBITRATOR

At approximately 0325 hours on February 14, 2013 train M 31031-13 initiated an emergency broadcast from mile 246.5 Kingston Subdivision. Mr. Phillips did not question the crew, as required by RTC Notice 11003 as to whether any public crossings were blocked and/ or automatic warning devices activated. Mr. Phillips was therefore not in a position to report that information to the Chief Dispatcher, signals and communications call desk and the CN Police Communications Centre.

Approximately a half hour later, after the crew inspected their train and called to advise of the derailment of four cars along with a car with a missing drawbar, Mr. Phillips' focus was on the possibility of a fire hazard on a car with flammable substances. He again did not inquire about whether public crossings at Grade were blocked or defective, nor did he notify the proper authorities.

The crew informed Mr. Phillips at 0449 hours that they had two crossings blocked. When Mr. Phillips acted to protect the crossing at that time, two trains, namely M37321 13 and Q12111 121 were already passed the crossings on the adjacent track. Had Mr. Phillips complied with Notice 11003 and RTC Rule 103 (g), and issued a written message or General Bulletin Order (GBO) the two trains would have been prevented from entering the block.

The Company took no action with respect to the February 14, 2013 incident until March 22, 2013, following an investigation into an unrelated incident involving Mr. Phillips that ended without any discipline being imposed. On March 22, 2013, the Company informed Mr. Phillips to attend an interview on March 25, 2013 with respect to the February 14, 2013. (I further note that on April 14, 2013, the Company also served Mr. Phillips with a further notice to attend an interview regarding an alleged failure to order a train on time, an offence which I understand rarely warrants a formal investigation). Following his interview regarding the February 14, 2013 incident, the Company assessed 30 demerit points and terminated Mr. Phillips's employment.

Mr. Phillips was clearly properly subject to discipline in this case. At the time of the imposition of the 30 demerit points for this incident, his record stood at 50 demerit points. Mr. Phillips was dismissed for the accumulation of 80 demerit points under the Brown system of discipline.

By the Company's admission, Mr. Phillips was a "focused" employee. In other words, the Company was paying particular attention to Mr. Phillips. I note that 25 of the 50 demerit points on Mr. Phillips' record at his time of discharge stemmed from conduct unbecoming relating to his assignment a year before the incident at hand. At the time of discharge, Mr. Phillips had approximately 15 years service with the Company.

I have reviewed the cases provided in support of the quantum of demerit points assessed against Mr. Phillips in this case. They are not analogous to case before me. In

the one case provided to me by the Union, which the Company agreed was on point, the Company chose to follow an informal process and the employee was assessed at 15 demerit points. Even if that assessment had been made here, the 60 demerit points established by the Brown system as the threshold for dismissal would have been exceeded by five points.

After a careful review of the context in which this discipline was imposed, compared with the other case in similar circumstances in which fewer demerit points were issued, I am concerned that Mr. Phillips was unfairly targeted, even in the case of a “focussed” employee.

In all the circumstances, and taking into account Mr. Phillips approximately 15 years service with the Company and his record, this is an appropriate case for reinstatement without loss of seniority but without compensation, and I so order.

October 14, 2013



CHRISTINE SCHMIDT
ARBITRATOR