

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4255

Heard in Calgary, November 12, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The assessment of twenty (20) demerits to Conductor Cory Sibley of Edmonton, Alberta, for failure to comply with CROR 115 resulting in the derailment of 512 on March 8, 2013, and subsequent discharge for accumulation of demerits in excess of sixty (60).

COMPANY'S EXPARTE STATEMENT OF ISSUE:

On March 8, 2013, the grievor was called as the Conductor on L51251 08, road switcher assignment operating out of Scotford. During this assignment, while switching cars at Agrium, MP 111.04 on the Vegreville Subdivision (Beamer Spur) PCLX 19856 and NAHX 163938 were derailed on their sides when they side swiped CRDX 8537 and UNPX 120105.

The grievor provided an employee statement with respect to the March 8, 2013 incident, and was subsequently assessed twenty (20) demerits for CROR 115 failure. These twenty (20) demerits, coupled with the fifty-five (55) demerits previously on the grievor's discipline record, resulted in discharge for accumulation.

The Union contends the Company has no real proof, only circumstantial evidence the grievor was in some way responsible, therefore the grievor must be returned to work and made whole.

The Company disagrees with the Union's contentions.

FOR THE UNION:
(SGD.)

FOR THE COMPANY:
(SGD.) D. VanCauwenbergh
Director Labour Relations

There appeared on behalf of the Company:

P. Payne	– Manager Labour Relations, Edmonton
K. Morris	– Senior Manager Labour Relations, Edmonton
D. Crossan	– Manager Labour Relations, Prince George
D. Brodie	– Manager Labour Relations, Edmonton

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Caley Wray, Toronto
R. Hackl	– General Chairman, Saskatoon

R. Thompson
J. Robbins
J. Lenny

– Vice General Chairman, Saskatoon
– General Chairman East, Sarnia
– Vice General Chairman East, Port Robinson

AWARD OF THE ARBITRATOR

Upon a review of the material filed the Arbitrator is satisfied that the Company has discharged the burden of proof which is upon it, to establish that the grievor did violate CROR 115 as a result of which a side-swipe and the derailment of two cars occurred in the exercise of a road switcher assignment on March 8th, 2013, at Agrium on the Vegreville Subdivision. The record confirms that during the course of switching at Agrium the grievor shoved twenty-four cars into Track 59, which has a capacity limitation of thirty-two cars. In fact, that track already had thirteen cars in it. In the result, he shoved cars beyond the limits of the track in a foul position, causing the side-swipe of other cars which were ultimately derailed and tipped onto their sides.

Following an investigation into the incident held on March 11, 2013 it was determined that the grievor violated rule CROR 115, for which he was assessed twenty demerits. As his previous record stood at fifty-five demerits he was terminated for the accumulation of demerits in excess of sixty.

In the Arbitrator's view there can be no doubt about the fact that he grievor violated the rule, as alleged. While it is true that he is a relatively junior employee, this does, nevertheless, involve his first offense in respect of the violation of an operating rule.

In the circumstances, I deem it appropriate to reinstate the grievor, albeit on conditions fashioned to protect the Company's legitimate interests, considering that a substantial part of the discipline contained in the grievor's record relates to issues of attendance management.

The grievance is therefore 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. The grievor's reinstatement shall be conditioned on his accepting to be subject to attendance monitoring for a period of not less than two years from the time of his return to work. During that period, should he, during any quarter, register either lateness or a rate of absenteeism in excess of the average for his peers at his terminal, he shall be subject to automatic termination, with access to arbitration only to determine whether he has failed to meet the average standard.

November 18, 2013

MICHEL G. PICHER
ARBITRATOR