

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4258**

Heard in Calgary, November 13, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the termination of Conductor Nora Olynyk.

JOINT STATEMENT OF ISSUE:

Following an investigation, on January 21, 2013, Conductor Nora Olynyk was discharged "For conduct unbecoming a Canadian Pacific employee as evidenced by your deliberate failure to complete your assigned duties in a productive and expeditious manner resulting in unnecessary and excessive delays to the operation including your assignment, the UE33-03 assignment, the UW11-04 assignment, and to Mechanical Services personnel, thus causing the Company to incur additional operating expense as well as restricting the Company's ability to properly service a customer, violations of CROR General Rule A (vi) and (viii) while working as Foreman on assignment UW31-03 on January 3, 2013."

The Union contends that the investigation was not conducted in a fair and impartial manner per the requirements of the Collective Agreement. For this reason, the Union contends that the discipline is null and void and ought to be removed in its entirety and Conductor Olynyk be made whole. The Union further contends that Conductor Olynyk's dismissal is unjustified, unwarranted and extremely excessive in all of the circumstances. The Union requests that the discipline be removed in its entirety, that Conductor Olynyk be ordered 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.) D. Olson
General Chairperson

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

There appeared on behalf of the Company:

D. Burke	– Manager, Labour Relations, Calgary
B. Sly	– Director, Labour Relations, Calgary
D. Guerin	– Director, Labour Relations, Calgary

There appeared on behalf of the Union:

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| D. Ellickson | – Counsel, Caley Wray, Toronto |
| D. Olson | – General Chairman, Calgary |
| D. Fulton | – Vice General Chairman, Calgary |
| R. McCann | – Local Chairman, Thunder Bay |
| D. Edwards | – Vice General Chairman, Medicine Hat |
| N. Olynyk | – Grievor, Thunder Bay |

AWARD OF THE ARBITRATOR

As a preliminary matter, the Union submits that the Company failed to conduct a proper disciplinary investigation, and deprived the grievor of a fair and impartial hearing, in relation to the events which resulted in her termination. Given my determination on the merits of the grievance, I do not consider it necessary to deal with that objection.

The grievor operated as Yard Foreman on yard assignment UW31-03, an assignment ordered at 23:15 for the Thunder Bay yard, on January 3, 2013. On the assignment in question she worked with Yard Helper Jason Burke. The Company formed the opinion that the work performed under the grievor's direction on the evening in question was done in an unacceptably excessive period of time. Following a disciplinary investigation it terminated the grievor's services for, "...your deliberate failure to complete your assigned duties in a productive and expeditious manner...".

It is trite to say that the Company bears the burden of proof in this, as in any matter relating to discipline. Upon a review of the extensive evidence presented, the Arbitrator is in some difficulty to understand how precisely the grievor can be said to have deliberately worked slowly and inefficiently in the manner suggested by the Company. The evidence of both the grievor and of her helper, Mr. Jason Burke, amply

confirms that the grievor's yard movement worked and moved virtually constantly through the entire tour of duty. There appears to be nothing more than one instance in which the movement was stationary for a period of no more than eight minutes.

The assignment which the grievor and her crew were to perform on the night in question involved switching out tracks at a number of commercial customers, namely Grain Elevators, and moving the traffic in question through several sections of the extensive yard facilities at Thunder Bay. While the record discloses that at least one other Yard Foreman, Ms. Lisa Ducharme, apparently complained that her own movement was being blocked by the slow progress of the grievor's assignment there is no statement on the record placed before the Arbitrator indicating that Ms. Ducharme herself felt that there was anything deliberately improper in the grievor's method of working. Nor can I find any substance to the suggestion in the Company's brief that Yard Helper Burke was effectively relegated to the locomotive as part of a deliberate decision by the grievor to perform all of the coupling and switching work herself. A review of Mr. Burke's evidence confirms that he performed work in relation to switches and other functions normally associated with the duties of a yard helper working from a position in the locomotive of a yard assignment.

On a review of the whole of the evidence, I can find no compelling material to sustain the Company's assertion that the grievor either deliberately or carelessly worked at an unacceptably slow pace on the assignment in question. As stressed by counsel for the Union, there is no prior discipline against the grievor, an employee of eighteen years

of service with a good disciplinary record, to suggest that her work habits were deficient. While the grievor may have been less than diplomatic in certain comments she may have made about the work she was performing and the performance of other employees, those facts of themselves do not sustain the Company's suggestion that she either deliberately or negligently worked at an unacceptable and inefficient rate on the occasion of the tour of duty in question. While there may be various ways in which the work might have been planned and performed otherwise than through the moves chosen by the grievor, the material before me does not confirm that the planning choices which she made were manifestly irresponsible or inefficient.

For the all of the foregoing reasons the grievance must be allowed. The Arbitrator directs that the grievor be reinstated into her employment forthwith, with compensation for all wages and benefits lost and without loss of seniority. Any notation in respect of the events of January 3, 2013 shall be stricken from her record.

November 18, 2013

MICHEL G. PICHER
ARBITRATOR