

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4271**

Heard in Montreal, December 11, 2013

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

And

**UNITED STEELWORKERS – LOCAL 1976**

**DISPUTE:**

The dismissal of Ed Delfino for accumulation of demerits following three separate investigations.

**JOINT STATEMENT OF ISSUE:**

Mr. Delfino was notified on April 23<sup>rd</sup> to attend an investigation May 6<sup>th</sup> pertaining to attendance exceptions from January to March of 2013. On May 1<sup>st</sup> following an unrelated incident of alleged insubordination Mr. Delfino was held out of service pending the outcome of another investigation scheduled for May 8<sup>th</sup>, 2013. Mr. Delfino did not attend his investigation of May 6<sup>th</sup>, 2013. Mr. Delfino attended the investigation for the alleged insubordination on May 8<sup>th</sup> 2013.

The Company held the re-scheduled May 6<sup>th</sup> investigation for attendance on May 13<sup>th</sup> and also held an investigation into his failure to attend the original investigation into his attendance scheduled for May 6<sup>th</sup>, 2013.

May 15<sup>th</sup> the company assessed his record with ten demerits for failure to attend an investigation, twenty demerits for attendance exceptions, forty-five demerits for insubordination and Mr. Delfino was dismissed. The union grieved the dismissal for accumulation of demerits as excessive. The Union contends that the intent of the three investigations in such a short time and subsequent assessment of 75 demerits was to target the grievor for termination.

Further, it is the Union's contention that because of the involvement of a senior officer in the company the demerits in each case were inflated in order to use the NEWS system of discipline to dismiss rather than correct behavior.

The Company denies these contentions and denied the grievance.

**FOR THE UNION:**  
**(SGD.) R. Marleau**  
VP District 6

**FOR THE COMPANY:**  
**(SGD.) D. Burke**  
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:

- R. Marleau – VP District 6, North Bay
- N. Lapointe – Staff Representative, Montreal
- E. Delfino – Grievor, Toronto

### **AWARD OF THE ARBITRATOR**

The record before the Arbitrator confirms that the grievor was assessed twenty demerits for problems in his attendance between January and March of 2013. He also received ten demerits for failing to appear at an investigation on May 6, 2013. Finally, he was assessed forty-five demerits for insubordination arising from his failure to follow the orders of a Senior Company Officer.

The Arbitrator can see no basis to vary the assessment of twenty demerits for absenteeism and the additional ten demerits for the grievor's failure to attend a properly scheduled disciplinary investigation. Greater concern arises, however, with respect to the assessment of forty-five demerits for insubordination, which caused the grievor's termination by reason of the accumulation of demerits.

The incident in relation to the alleged insubordination is relatively simple. On April 29, 2013, Senior Vice President Guido Deciccio visited the Vaughan intermodal facility. As he entered the premises he observed two gate clerk inspectors who were inside a kiosk. Proceeding to the kiosk Mr. Deciccio discovered the grievor sitting and

reading a newspaper. He verbally admonished both employees, stressing that they should be outside and be aware of their surroundings. Some two days later Mr. Deciccio returned to the Vaughan intermodal facility, when he again found Mr. Delfino seated in the kiosk, reading the newspaper. The grievor was then removed from Company service pending an investigation. Following the investigation the Company concluded that the grievor was in fact insubordinate in failing to respect the directive of a Senior Officer, as conveyed to him by written notification dated May 15, 2013.

I am satisfied that the grievor was deserving of discipline in relation to all three incidents. The real issue is whether the quantum of discipline assessed was appropriate in all of the circumstances.

The grievor's record is not particularly enviable, as he has apparently been previously terminated and reinstated on compassionate grounds. Nevertheless, the Arbitrator does have difficulty with the quantum of discipline assessed for the grievor's failure to follow the directive to not read a newspaper in the gateway kiosk. Forty-five demerits is an amount normally associated with major misconduct, for example, a serious safety infraction. While the Arbitrator readily appreciates the Company's perspective as to the grievor's failure to respect the directive of a senior officer that he should not read a newspaper while on duty, I am not convinced that such an infraction merits a discipline of a quantity that might be appropriate to a Rule G violation or causing a significant derailment. In my view the assessment of fifteen demerits for the

failure to follow the instruction with respect to not reading the newspaper would have been more appropriate.

I do not, however, consider this is an appropriate case for compensation, given the grievor's obvious indifference to the instruction that was given to him by a senior Company officer. 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 time between the grievor's termination and reinstatement shall be recorded as a suspension, with the grievor's record to be adjusted to thirty demerits.

December 16, 2013

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MICHEL G. PICHER  
ARBITRATOR