

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4287

Heard in Montreal, February 12, 2014

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the termination of Conductor Kristen Grimsdale.

JOINT STATEMENT OF ISSUE:

Following an investigation, on March 28, 2013, Conductor Grimsdale was discharged "For conduct unbecoming an employee as evidenced by you failing to conduct yourself in a professional and courteous manner, as demonstrated by your abruptly hanging up on two Company Officers during phone conversations on March 3, 2013 and for your deliberate and intentional delay to train 491-27 on March 1, 2013 while working as a Conductor in Sutherland; Saskatchewan."

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 Grimsdale be made whole. The Union further contends that Conductor Grimsdale's dismissal is unjustified, unwarranted and excessive in all of the circumstances. In addition, the Union contends that Conductor Grimsdale was wrongfully held from service in connection with this matter, contrary to Article 70.05 of the Collective Agreement.

The Union requests that the discipline be removed in its entirety, that Conductor Grimsdale be ordered reinstated forthwith without loss of seniority and benefits, and that he 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 with the Union's contentions and has denied the Union's request.

FOR THE UNION:
(SGD.) D. Fulton for D. Olson
General Chairperson

FOR THE COMPANY:
(SGD.) A. Becker
Labour Relations Officer

There appeared on behalf of the Company:

B. Sly – Director, Labour Relations, Calgary

There appeared on behalf of the Union:

D. Ellickson – Counsel, Caley Wray, Toronto
D. Olson – General Chairman, Calgary
D. Fulton – Vice General Chairman, Calgary
D. McCulloch – Local Chairman, Saskatoon
D. Able – General Chairman, Calgary
K. Grimsdale – Grievor, Saskatoon

AWARD OF THE ARBITRATOR

The grievor was assessed fifty demerits for intentionally delaying train operations on March 1, 2013. It is alleged that he and his locomotive engineer deliberately sat idle at Wynyard Yard, Saskatchewan, failing to attempt to commence the assembling of his train while another train was operating in the yard. The Company's position is that the grievor and his workmate could have done some useful things during the time they were awaiting train 490 to complete its activities in the yard before commencing to assemble their own train for departure. Following an investigation of the incident, both employees were assessed fifty demerits for that "deliberate and intentional delay" to train 491-27.

Additionally, the grievor was assessed ten demerits for insubordination. It appears that during the course of telephone conversations with two supervisors the grievor hung up the phone on them, which resulted in the further assessment of ten demerits.

The Union raises a number of objections. It alleges that the grievor was denied a fair and impartial investigation and that he was improperly held out of service in contravention of Article 70.05 of the collective agreement, in addition to its fundamental position that there was no just cause for discipline against Conductor Grimsdale.

The Arbitrator cannot sustain the Union's suggestion that the grievor was denied a fair and impartial investigation. While it is true, as the Union notes, that the notice of investigation dated March 6, 2013 provided to the grievor made for specific reference to his telephone conversation with a single supervisor, Trainmaster Marlin Korczak, it does not appear disputed that the investigation developed information concerning the fact that the grievor had in fact hung up on another Company officer during a separate telephone conversation. It appears that the grievor did hang up on Trainmaster Korczak during a course of a conversation on March 3rd during which Trainmaster Korczak sought to obtain information about the train delay issue. Additionally, following the decision to remove the grievor from service, when he was phoned by Assistant Superintendent Scott McIntyre to be advised of that fact and that his hanging up on Trainmaster Korczak would also be investigated in addition to the train delay, the grievor ended that conversation by again hanging up the phone.

I turn firstly to the question of whether the Company violated Article 70.05. It is common ground that the grievor was effectively held out of service for a period of some

twenty-five days before he was ultimately terminated. Article 70.05 provides as follows:

70.05 An employee is not to be held off unnecessarily in connection with an investigation unless the nature of the alleged offence is of itself such that it places doubt on the continued employment of the individual or to expedite the investigation, where this is necessary to ensure the availability of all relevant witnesses to an incident to participate in all the statements during an investigation which could have a bearing on their responsibility. Layover time will be used as far as practicable. An employee who is found blameless will be reimbursed for time lost in accordance with Clause 30.01 (1), (2), (4) or Clause 49.01 (1), (2), (4).

On the basis of the material before me, I am not satisfied that the Company did not have grounds to consider that the alleged delay of operations deliberately engaged in, coupled with the alleged disrespect of the grievor shown towards supervisors by hanging up on them, did not put into doubt the continued employment of Mr. Grimsdale. In my view the Company was entitled to view the matter as one which truly did cast into doubt the grievor's continued employment, and thereby justified its decision to hold him out of service pending the completion of its investigation.

Nor can I find that there was any meaningful violation of the grievor's entitlement to a fair and impartial investigation. Firstly, it should be noted that the notice of investigation provided to Mr. Grimsdale expressly referenced both his conversation with Trainmaster Korczak and his conversation with Assistant Superintendent McIntyre. Appended to the notice were memo's from Trainmaster Korczak and Assistant Superintendent McIntyre describing the telephone conversations and the fact that the grievor had hung up on them. He was advised that those documents would be introduced into the investigation. On what basis can it be suggested that he was

deprived of a fair and impartial investigation in respect of those questions? I can see none.

What remains is the question of substance. Was there just cause for discipline against the grievor in respect of his alleged delay of his train in the Wynyard Yard and, secondly, his alleged lack of respect for his supervisors. With respect to the delay of train allegation, the Company stresses that the locomotive engineer with whom the grievor worked was also assessed fifty demerits and filed no grievance against that discipline.

I am satisfied that the grievor was liable to a serious degree of discipline with respect to the alleged delay of his train on March 1st, 2013 in Wynyard Saskatchewan. I am not persuaded, however, that that incident alone should be viewed as having justified the assessment of fifty demerits, more than eighty percent of the way to discharge. I am satisfied, that given the grievor's prior positive disciplinary record, a reduction of that penalty through the exercise of the Arbitrator's discretion is appropriate. I am not inclined, however, to adjust the ten demerits assessed against Mr. Grimsdale for hanging up on two separate supervisors. That was clearly a disrespectful, if not insubordinate, action on his part deserving of discipline.

For all of the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, with the discipline assessed against him for the delay of train on March 1, 2013 to be reduced to thirty

demerits and the ten demerits for insubordination to remain unchanged, leaving him with a total of forty demerits on his record. His reinstatement shall be without compensation for any wages and benefits lost, and without loss of seniority.

February 17, 2014

MICHEL G. PICHER
ARBITRATOR