

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4298**

Heard in Calgary, March 13, 2014

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

**TEAMSTERS CANADA RAIL CONFERENCE
RAIL TRAFFIC CONTROLLERS**

DISPUTE:

Appeal of Twenty (20) demerits assessed on June 17, 2013 to Rail Traffic Controller Mark O'Flaherty resulting in dismissal for accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

On May 17, 2013 Rail Traffic Controller Mark O'Flaherty attended an investigation "...for events surrounding your tour of duty as the Alberta South desk Rail Traffic Controller on May 17th, 2013; more specifically, events surrounding your handling of a train location report for 519-13 (8530 West) , at East Cautionary Limits sign Lethbridge yard for the purpose of releasing track". Following this investigation, the company assessed Mr. O'Flaherty's record with 20 demerits on June 17, 2013 for violation of RTC Manual Instructions Section 12.5 (Track Release – accepting a track release), CROR General Rule A (i) and (vi), and CROR General Rule C.

The Union contends that the assessment of 20 demerits for this incident and the resulting dismissal for accumulation of demerits is excessive.

The Union request that 20 demerits assessed to RTC O'Flaherty be removed and that he be returned to service with full seniority and made whole for all lost wages and benefits. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

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

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

M. Moran	– Manager, Labour Relations, Calgary
B. Free	– Manager, CMC, Calgary

There appeared on behalf of the Union:

S. Brownlee	– General Chair, Stoney Plain
C. Clark	– Vice General Chairman, Okotoksas
V. Linkletter	– Jr. Vice General Chair, Calgary

AWARD OF THE ARBITRATOR

Mr. Mark O'Flaherty, a Rail Traffic Controller ("RTC") was dismissed from the Canadian Pacific Railway ("the Company") following the assessment of 20 demerit points for accumulation of demerits in accordance with the Brown System of Discipline. The Teamsters Canada Rail Conference – Rail Traffic Controllers ("the Union") contends that the Company's assessment is excessive.

The incident at issue took place on May 13, 2013, while train 519-13 was travelling in OCS or "dark territory." The grievor confirmed and completed a track release with incorrect information provided by the locomotive engineer that was inconsistent with the information provided by the conductor. As such the grievor violated the RTC manual instructions section 12.5 (track release – accepting a track release). The grievor was unable to provide any explanation for having missed the discrepancy.

Three months prior, on February 8, 2013, the grievor signed a last chance employment contract ("LCEC") with the Company. The circumstances leading to the LCEC are as follows. On January 23, 2013, the grievor's record stood at 55 demerits, when he violated CROR Rule 136. The Company assessed 10 demerits against the grievor, which would normally result in the grievor's dismissal for accumulation of demerits.

As an alternative to the grievor's dismissal, the parties signed an LCEC, which effectively placed the 10 demerits in abeyance. They agreed that if additional discipline

was issued against the grievor prior within 12 months, the deferred 10 demerits would be added to his discipline record, and he would be dismissed due to an accumulation of demerit. In addition, the LCEC stipulates:

The parties agree that there will be no grievance advanced on the above terms and conditions, with the exception that should Mr. O'Flaherty be assessed subsequent discipline while this agreement is in effect, or be found to have violated any of the aforementioned terms and conditions, he may grieve the specific circumstances for the purpose of establishing whether he did or did not violate this agreement.

Decision

The LCEC stipulates, and the parties agree that if any discipline is warranted in this case, then the dismissal is justified pursuant to the LCEC. The grievor's termination can only be avoided if I find that no discipline at all was warranted.

In its submissions, the Union pointed out that the grievor's track release input into the system was correct and that at no time was the train operating without authority. Further, the Union explained that recently (although this is no longer the case) the Railway Association of Canada had been recommending making changes to the CROR Rule 85 governing the release of track in OCS territory.

The grievor has effectively been given two second chances at correcting his behaviour, the last being under the LCEC. I agree with arbitrator Picher in **CROA 3224** when he expressed that in such circumstances: "an Arbitrator should be extremely cautious to interfere, less the very purpose of deferred discipline is its self undermined." The imposition of some discipline for the track release was warranted. The incident

leading to the imposition of the LCEC was for a CROR Rule 136 violation similar to the one before me. The grievance therefore cannot be sustained.

The grievance is dismissed.

March 20, 2014

A handwritten signature in blue ink, appearing to read 'CS', is positioned above a solid horizontal line.

CHRISINE SCHMIDT
ARBITRATOR