

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4302**

Heard in Montreal, April 9, 2014

Concerning

VIA RAIL CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discipline and resulting discharge of Locomotive Engineer Zenon Mysakowec.

JOINT STATEMENT OF ISSUE:

On November 6th the grievor was assessed ten (10) demerits for "Failure to comply with CN GOI Section 8, 4.3.1 while working on train # 83 October 15, 2013 and on December 2nd the grievor was assessed ten (10) demerits for "Failure to comply with CROR 33 and CN timetable footnotes for the Halton subdivision (speeds) while working on train #85 October 27, 2013". The discipline assessed for these two (2) infractions resulted in the dismissal of the grievor for accumulation of sixty-five (65) demerits.

The Union contends that the investigation was not conducted in a fair and impartial manner in accordance with the Collective Agreement. For this reason, the Union contends that the discipline is null and void and ought to be removed in its entirety.

In addition the Union contends that the dismissal of Mr. Mysakowec is unwarranted and excessive in all of the circumstances. The Union contends that the Company is unable to discharge the burden of proof in respect of all grounds of discipline assessed. The Union further contends that the penalty of discharge is discriminatory (that is, disproportional) compared to the penalties previously assessed other employees in analogous circumstances.

The Union requests that the grievor be reinstated 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 Corporation submits that the dismissal for accumulation of demerits was warranted and appropriate based on the doctrine of culminating incident. Furthermore, the Corporation submits that this is not an appropriate case for the exercise of discretion and substitution of penalty.

FOR THE UNION:
(SGD.) W. Michael
General Chairman

FOR THE COMPANY:
(SGD.) G. Sarazin
Senior Advisor, Labour Relations

There appeared on behalf of the Company:

- E. Houlihan – Director Employee Relations, Montreal
- M. Brankley – Senior Manager Train Operations, Central Region
- G. Sarazin – Senior Advisor, Labour Relations, Montreal

There appeared on behalf of the Union:

- M. Church – Counsel, Caley Wray, Toronto
- W. Michael – General Chairman, Kitchener
- P. Hope – Local Chairman Div. 747, Burlington
- R. Caldwell – General Chairman, Bancroft
- B. Willows – General Chairman, Edmonton
- P. Boucher – Vice-General Chairman, Belleville
- Z. Mysakowec – Grievor, Toronto

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor was involved in two infractions, each of which I am satisfied would have justified the assessment of some discipline. The first involved his failure to wear safety glasses while working on board a train on October 16, 2013, contrary to the mandatory rule in that regard. The second infraction relates to a ninety second period during which the grievor operated his train at some ten miles per hour over the speed limit. He received ten demerits for each of the foregoing infractions, and as his prior discipline stood at 45 demerits, those two heads of discipline resulted in the termination of his employment.

Counsel for the Union, stresses that the grievor, an employee of some thirty-two years of service, has never previously been disciplined for significant cardinal rule violations, though it is not disputed that he has recorded a less than pristine discipline record over the years.

Having regard to the whole of the facts reviewed, and in particular giving some value to the length of the grievor's prior service and the relatively minor nature of the two heads of discipline which ultimately lead to his termination after thirty-two years of service, I am satisfied that this is an appropriate case for a reduction of penalty.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, with his disciplinary record to be reduced by the removal of twenty demerits, although the notations in respect of the infractions giving rise to this grievance shall remain on his record. The grievor's reinstatement to employment shall be without compensation for any wages or benefits lost and without loss of seniority.

April 14, 2014

MICHEL G. PICHER
ARBITRATOR