

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4325

Heard in Montreal, July 9, 2014

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal on behalf of Conductor Ken Paulson of Winnipeg, Manitoba, appealing the discipline of 25 demerit marks, and his resulting discharge for an accumulation of demerit marks, assessed for "violation of CROR General Notice, A, C, 106, 114, 108, GOI Section 8 Part 3, GOI Section 8, part 12.1 and 12.3, during your tour of duty on November 06, 2013."

COMPANY'S EXPARTE STATEMENT OF ISSUE:

On November 6, 2013, Conductor Paulson worked the 22:00 hours, East Tower Yard Assignment in Symington Yard, and was determined to have committed the above-noted infractions.

The Company conducted an investigation of the incident and determined that Mr. Paulson had violated CROR Rules, and Company General Operating Instructions, and was deserving of the discipline of 25 demerit marks, which subsequently discharged him for accumulation of demerit marks.

The Union contends that the discipline was unwarranted and should be expunged from his record, or reduced, and that he ought to be reinstated and made whole.

The Company disagrees with the Union's contentions.

FOR THE UNION:
(SGD.)

FOR THE COMPANY:
(SGD.) D. Brodie for K. Madigan
Vice President Human Resources

There appeared on behalf of the Company:

D. Brodie	– Manager Labour Relations, Edmonton
K. Morris	– Senior Manager Labour Relations, Edmonton
P. Payne	– Manager Labour Relations, Edmonton

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Caley Wray, Toronto
R. Hackl	– General Chairman, Saskatchewan

AWARD OF THE ARBITRATOR

The record confirms that on November 6, 2013 the grievor was working as conductor on a yard assignment in Symington yard in Winnipeg, along with assistant conductor Mr. Ty Taylor. At one point during the assignment Mr. Taylor was on the ground to line switches for the placement of rail cars being released at an upgrade position by Mr. Paulson. During the course of the operation, while Mr. Taylor was at the location of a switch controlling access to storage tracks. Apparently having some difficulties lining a switch, he looked up and noticed that the grievor had in fact released a car which was moving down grade towards him. By Mr. Taylor's account he quickly lined the switch back and ran clear before shortly thereafter expressing his strong displeasure to the grievor who responded "sorry". It is not disputed that the grievor should not have released the car until he had a clear signal to do so from Mr. Taylor, something which had not occurred.

On the whole, the Arbitrator is satisfied that the incident in question confirms that the grievor made himself liable to discipline. The sole issue is the appropriate measure of that discipline. Following an investigation the Company assessed twenty-five demerit marks against Mr. Paulson, which resulted in his discharge for the accumulation of demerit marks, given that he then had fifty active demerits on his record, in addition to two prior disciplinary suspensions.

In the case at hand the Arbitrator has some difficulty with the merits of the Union's grievance. The grievor is not a long term employee, with the equivalent of one

and half years of active service. In that relatively short period of time, prior to the incident here under examination, he amassed fifty demerit points in addition to two disciplinary suspensions of fourteen days and twenty-one days respectively. Most critically the culminating incident which is here under examination is one which could well have resulted in a serious injury or fatality. At the time in question the grievor knew, or reasonably should have known that with his disciplinary record standing at fifty demerits, in addition to two substantial suspensions, any further serious error on his part would in all likelihood mean the end of his short railroading career. Unfortunately he does not present as a promising employee, particularly given the fact that he was subject to four prior disciplinary interventions in the year 2013, as stressed by the Company in its submission to the Arbitrator.

On the whole, I am satisfied that the assessment of twenty-five demerits was within the appropriate range of discipline for the conduct here under review. Given the unenviable prior record amassed by the grievor in a short period of active employment I am not persuaded that it is appropriate to disturb that discipline, having particular regard to the extremely dangerous near miss incident which was triggered by the grievor's inattention.

For the foregoing reasons the grievance must be dismissed.

July 14, 2014

MICHEL G. PICHER
ARBITRATOR