

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4342

Heard in Montreal, October 15, 2014

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

1. Appeal on behalf of Conductor Brad Fleishhacker of the assessment of the discipline of 15 demerit marks for "failure to inspect Train G81141-13, in compliance with CRO Rule 110, at Juniata, on October 14, 2012.
2. Appeal on behalf of Conductor Brad Fleishhacker of Saskatoon, Saskatchewan, appealing the discipline of 15 demerit marks assessed for "failure to wear safety glasses as prescribed in GOI 8 section 4.3.
3. Appeal on behalf of Conductor Brad Fleishhacker of Saskatoon, Saskatchewan, appealing the discipline of 15 demerit marks, and his resulting discharge for an accumulation of demerit marks, assessed for "failure to detrain in the prescribed manner as outline in GOI 8 Section 12.5."

COMPANY'S EXPARTE STATEMENT OF ISSUE:

1. On October 14, 2012, Mr. Fleishhacker was assigned as the Conductor on Train Q114, and was determined to have committed the above-noted Rules infraction.
The Company conducted an investigation of the incident and determined that Conductor Fleishhacker had violated the Rule noted, and was deserving of the discipline of 15 demerit marks.
The Union contends that the discipline of 15 demerit marks should be expunged.
The Company disagrees with the Union's contentions.
2. On January 5, 2014, Conductor Fleishhacker worked Train Q11451-04, and while in Saskatoon Yard, was determined to have committed the above-noted infraction.
The Company conducted an investigation of the incident and determined that Mr. Fleishhacker had violated Company instructions, and was deserving of the discipline of 15 demerit marks.
The Union contends that the discipline was unwarranted and should be expunged from his record.
The Company disagrees with the Union's contentions.

3. On January 5, 2014, Conductor Fleishhacker worked Train Q11451-04, and while in Saskatoon Yard, was determined to have committed the above-noted infraction.

The Company conducted an investigation of the incident and determined that Mr. Fleishhacker had violated Company instructions, and was deserving of the discipline of 15 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 Union's grievance also alleged that the grievor's disciplinary investigation was not conducted in a manner that was fair and impartial in accordance with Article 117 of Agreement 4.3.

The Company disagrees with the Union's contentions.

**FOR THE UNION:
(SGD.)**

**FOR THE COMPANY:
(SGD.) D. Brodie on behalf of K. Madigan
VP Human Resources**

There appeared on behalf of the Company:

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|------------|---|
| D. Brodie | – Manager Labour Relations, Edmonton |
| K. Morris | – Senior Manager Labour Relations, Edmonton |
| D. Crossan | – Manager Labour Relations, Prince George |

There appeared on behalf of the Union:

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|-------------|--------------------------------|
| K. Stuebing | – Counsel, Caley Wray, Toronto |
| R. Hackl | – General Chairman, Saskatoon |

AWARD OF THE ARBITRATOR

On review of the material and submissions made by the parties at the hearing before me on October 15, 2014, I make the following findings and declarations.

Mr. Fleishhacker (the "grievor") shall be reinstated effective immediately. Subject to the following, the grievor will be returned to service without compensation or benefits for time lost but with full seniority.

The grievor's record shall be amended to reflect the following notations:

1. 15 demerits assessed on November 28, 2012 "Failure to inspect Train G81141-13, in compliance with CRO Rule 110, at Juniata, on October 14, 2012;
2. WRITTEN REPRIMAND assessed on January 13, 2014 for "failure to wear safety glasses as prescribed in GOI 8 section 4.3;"

3. WRITTEN REPRIMAND for “failure to detrain in the prescribed manner as outline in GOI 8 section 12.5.” and discharge for an accumulation of demerits,

Upon his return to work, the grievor’s discipline record shall stand at 50 demerit marks.

Before recommencing active duty in a safety critical position, the grievor must submit to an OHS directed safety critical fitness to work medical assessment and must first be determined to be medically fit to return to safety critical service. The grievor will be compensated as provided in Agreement 4.3 through this process.

Before recommencing active duty, the grievor must attend Rules training. The grievor will be entitled to compensation and/or expenses associated with his attendance at Rules training as provided in Agreement 4.3.

In issuing this Award, I hereby caution the grievor that this represents a final opportunity to demonstrate his potential as an employee with Canadian National.

I shall remain seized in the event that there is any difference as to the interpretation or implementation of this Award.

November 5, 2014

CHRISTINE SCHMIDT
ARBITRATOR