

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION**

**CASE NO. 4351**

Heard in Montreal, January 13, 2015

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the assessment of 30 demerit marks to Foreman W. Jackson for violation of CRO Rules 108 and 115 resulting in a sideswipe and subsequent derailment on March 25, 2014 while working the 23:30 East YTES61 assignment and subsequent dismissal for accumulation of 75 demerits.

**THE COMPANY'S EXPARTE STATEMENT OF ISSUE:**

At 02:30 on March 25<sup>th</sup>, 2014 Foreman W. Jackson was assigned as the Foreman on YTES61, 23:30 yard assignment. During this assignment after shoving five (5) empty tank cars into track PF29 Foreman Jackson proceeded to make two moves into PF 30 and 31. While making these moves, the cars in PF29 rolled out and stopped foul of the lead. Mr. Jackson failed to observe that the cars had rolled out of PF 29 and was now foul of the lead.

The Company conducted an investigation of the accident and determined that Conductor Jackson was in violation of CRO Rules 108 and 115 and therefore deserving of discipline in the form of thirty (30) demerits which resulted in his dismissal for accumulation of demerits.

The Union contends that although Mr. Jackson bears some responsibility for this incident, the discipline assessed was excessive.

The Company disagrees with the Union's contentions.

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

**FOR THE COMPANY:  
(SGD.) D. Crossan for D. VanCauwenbergh  
Director, Labour Relations**

There appeared on behalf of the Company:

D. Crossan	– Manager Labour Relations, Prince George
K. Morris	– Senior Manager Labour Relations, Edmonton
M. Peterson	– Assistant Superintendent, Vancouver
P. Payne	– Manager, Labour Relations, Edmonton

There appeared on behalf of the Union:

A. Stevens	– Counsel, Caley Wray, Toronto
R. Hackl	– General Chairman, Saskatoon

### **AWARD OF THE ARBITRATOR**

The grievor, William Jackson was assessed thirty demerit points for violation of CRO Rules 108 and 115 as a result of a sideswipe and derailment. This resulted in his discharge for accumulation of seventy-five demerit points.

The evidence discloses that the grievor shoved two rail cars into track PF29. He then proceeded to move cars into PF30. While doing so, he got off the cars on PF30 and was on the ground. He did not see that the cars he had previously placed on PF29 had rolled and were foul of the lead. As a result the cars that had been moved from PF30 sideswiped the cars now foul of the lead resulting in the derailment. In the investigation report, Mr. Jackson said he ensured that when he left the cars on PF29 they were not rolling back towards the lead. He said he knew they would not roll back because he observed them. When asked about his awareness of a hump on the track that could allow the cars to roll back towards the lead, Mr. Jackson said he was not aware of it at the time of the incident. He was not in a position to see the east end of PF29 as he came out of PF 30 because he was focused on the next move and the job at hand.

The grievor was "on the ground standing wide" when the cars were coming out of PF30. He admitted that he was focused on the job and what he was doing and did not see the east end of PF29 which was out foul of the lead. Mr. Jackson reiterated at least twice that he was protecting the point as he pulled back but did not see that PF29 was foul of the lead. He did not expect PF29 to run foul.

The Company says that the grievor should have confirmed that the route was clear and specifically that he could clearly see, in accordance with Rule 115 that the track was clear.

Those rules provide as follows:

**108. Precautions While Switching**

When switching is performed, precautions must be taken by crew members to prevent unintended rollbacks and/or fouling of other tracks and equipment.

**115. Shoving Equipment**

(a) When equipment is shoved by an engine or is headed by an unmanned remotely controlled engine, a crew member must be on the leading piece of equipment or on the ground, in a position to observe the track to be used and to give signals or instructions necessary to control the move.

**EXCEPTION:** A crew member need not be so positioned when the portion of the track to be used is known to be clear. However, equipment not headed by an engine must not approach to within 100 feet of any public, private or farm crossing unless such crossings are protected as described in Rule 103 paragraph (b) or (g).

(b) Known to be clear is defined as seeing the portion of the track to be used as being clear and remaining clear of equipment and as having sufficient room to contain equipment being shoved. This determination must be made by a qualified employee who can observe the track and has radio contact with the employee controlling the movement. Where a track that has been seen to be clear and no access to that track is possible by another movement, the track may be considered as "known to be clear".

**Note:** When it can be determined that other movements are not on duty or will not be performing work in the track to be used, the requirement of "known to be clear" can be considered to be fulfilled continuously.

(c) On main track, when equipment is shoved by an engine or is headed by an unmanned remotely controlled engine, unless protected by a crew member as described in paragraph (a), this move must:

1. have the required authority;
2. not exceed the overall length of the equipment;
3. not exceed 15 MPH; and
4. not be made while the leading car is within cautionary limits.

(d) Unless the route is known to be clear, when reversing with a locomotive consist and visibility is restricted, a member of the crew must be on the leading end and in position from which signals necessary can be properly given.

The Company contends that the grievor was not on the leading piece of equipment or on the ground in a position to observe the track to be used as required under CROR 115. It asserts his view was obstructed and as a result of that failure, the incident occurred. He was issued thirty demerit points under the Brown System of discipline.

In the two years and seven months that the grievor has been employed by the company he had accumulated 45 demerit points as well as a suspension. Of those, 15 demerit points had been issued for a CROR 113 violation that resulted in a derailment and 30 demerit points four months before the instant incident for a CROR 115 violation that resulted in a sideswipe event. The grievor was advised in November 2013 of the status of his disciplinary record and of the consequences of further discipline.

The Union contends that the grievor did not violate CRO Rule 115 in that he was on the ground watching the cars and could not be expected to anticipate the sideswipe would occur. It further relies on changes instituted at the health and safety committee on

April 8, 2014. Although the engineering assessment deemed that PF29 would hold cars without the possibility of an unintended rollback, in an abundance of caution the employer issued an Operating Bulletin required a hand brake be used as a precaution. The use of this handbrake was new, and in the Union's view means that should mitigate the discharge in this case.

The grievor clearly did not expect that PF29 was foul of the lead nor was it on the last occasion when he saw it. The difficulty is that the purpose and intent of CRO Rule 115 provides that the crew must be in a position to observe the track. Mr. Jackson was not. He was neither on the leading piece of equipment nor standing wide enough to see that PF29 had moved foul of the lead. That conduct must attract discipline, given the seriousness of the violation and the serious consequence of what can flow from it in a safety critical position.

The fact that the Company responded to the incident by issuing a new directive does not absolve the grievor of responsibility for not ensuring compliance with CRO Rule 115. The Company responded to an incident by determining whether additional safety measures could be employed. Doing so does not detract from the fact that had Mr. Jackson complied with CRO 115, he would have seen that it was foul of the lead. That would have prevented the sideswipe and derailment.

The employer had cause for discipline in this case. Even had the employer issued discipline at fifteen demerits, the grievor's accumulation would have resulted in his discharge. In his short tenure of slightly over two and a half years of service, the grievor had accumulated forty-five demerit points as well as a suspension. In this case I find no reason to mitigate the penalty issued by the Company. The grievor's discipline was progressive and appropriate. He has a history of CROR violations in a short period of employment. Accordingly the grievance is dismissed.

February 5, 2015



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MARILYN SILVERMAN  
ARBITRATOR