

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4356**

Heard in Montreal, January 15, 2015

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAILWAY CONFERENCE**

**DISPUTE:**

Appeal of the assessment of 20 demerits and dismissal for accumulation of Conductor T. Nenasheff on June 17, 2013.

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

Following an investigation, Conductor Nenasheff was assessed 20 demerits for your failure to verbally communicate and confirm that the hand operated switch associated with your crew's work activities was properly lined and locked for the route to be used resulting in the Ogden Auto Compound Track 5/6 Switch being run through and the subsequent derailment of the "A" end of car TTGX 990279, violations of CROR General Rule C (i), CRO Rule 114, CRO Rule 106, CRO General Rule A (iii), and CROR General Notice, during your tour of duty as yard Foreman on Assignment AG 13-06 on May 6<sup>th</sup>, 2013. Conductor Nenasheff was subsequently dismissed for accumulation of demerits.

The Union contends that the discipline and discharge assessed to Conductor Nenasheff is unwarranted, unjustified and excessive in all of the circumstances, including mitigating factors evident in this matter.

The Union requests that the discipline be removed in its entirety and that Conductor Nenasheff be ordered reinstated forthwith 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 Company disagrees and denies the Union's request.

**FOR THE UNION:**  
**(SGD.) D. Olson**  
**General Chairperson**

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

There appeared on behalf of the Company:

B. Medd	– Officer, Labour Relations, Calgary
N. Hasham	– Legal Counsel, Toronto
G. Squires	– Superintendent, Edmonton

There appeared on behalf of the Union:

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|--------------|----------------------------------|
| K. Stuebing  | – Counsel, Caley Wray, Toronto   |
| D. Fulton    | – General Chairman, Calgary      |
| K. Day       | – Local Chairman, Calgary        |
| R. Finson    | – Vice General Chairman, Wynyard |
| W. McColter  | – Local Chairman, Edmonton       |
| T. Nenasheff | – Grievor, Calgary               |

### **AWARD OF THE ARBITRATOR**

This case concerns the assessment of twenty demerit points and discharge for accumulation of the grievor, a conductor with sixteen years of service.

On May 6, 2013 the grievor was working as a yard foreman when a derailment occurred. The material discloses that the occurrence of the derailment was the result of the fact that a 5/6 switch was improperly lined. The Company says this mistake was the grievor's and a breach of CRO General Rule C (i), CRO Rule 114, CRO General Rule A (iii) and CRO General Notice. Those rules provide as follows:

**CRO General Rule C**

Employees must;

- (i) be vigilant to avoid the risk of injury to themselves or others;  
Crew members are jointly responsible to make verbal communication between each other and confirm it is properly understood whenever any of the following work activities apply to them:
  - hand operated switches (including those of a crossover) are lined and/or locked, confirming route to be used

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**CRO Rule 114. Fouling Other Tracks**

- (a) Equipment must not be allowed to move foul of another track unless properly protected.
- (b) A movement must not foul a track until the switches connected with the move are properly lined, or in the case of semi-automatic or spring switches, the conflicting route is known to be clear.

**EXCEPTION:** A movement may foul a track connected by a hand operated switch provided that:

- (i) neither the track occupied nor the track to be fouled are main tracks;
- (ii) the conflicting route is known to be clear; and
- (iii) the switch is properly lined before the movement passes over it.

(c) Equipment must not be left foul of a connecting track unless the switch is left lined for the track upon which such equipment is standing.

**CRO General Rule A (iii)**

**A** Every employee in any service connected with movements, handling of main track switches and protection of track work and track units shall;

- (iii) provide every possible assistance to ensure every rule, special instruction and general operating instruction is complied with and shall report promptly to the proper authority any violations thereof;

**CRO General Notice**

Safety and a willingness to obey the rules are of the first importance in the performance of duty.

If in doubt, the safe course must be taken

The investigation material discloses that on the day of the incident the grievor was working with Yard Helper Chrunik and Locomotive Engineer Cigul. Prior to the incident, the grievor had placed three auto decks into Track 6. The grievor then walked along the cars in Track 6. It was during this time that Mr. Nenasheff heard Yard Helper Chrunik inform Locomotive Engineer Cigul that the 5/6 switch was lined for Track 6. A job briefing was held and it was decided that 5 cars would be shoved to Track 6. Mr. Nenasheff then walked to a position to watch the point and instructed the locomotive engineer to begin the movement which he thought was onto Track 6. The derailment then occurred.

During the relevant time, the yard helper was physically near the 5/6 switch and Mr. Nenasheff was not. The investigation material discloses that Mr. Cigui, the locomotive engineer was advised of the track he was to be moving to and recalls being told they were lined for Track 6. Mr. Chrunik, the yard helper confirmed that he told Mr. Cigui that the route to be used was properly lined to Track 6. Mr. Chrunik did not recall visually checking the switch nor did he recall the indication of the 5/6 switch just prior to the derailment. Mr. Chrunik was not disciplined for the incident.

The Union contends that Mr. Chrunik was alone responsible for the derailment and Mr. Nenasheff was in no way responsible. It asserts that the grievor was not around or required to be around to line the switch. The Union says that visual contact with the switch was Mr. Chrunik's responsibility exclusively.

The Company relies on **CROA&DR** jurisprudence in asserting a range of twenty to forty-five demerits for similar violations.

The derailment, which was serious, occurred because of the failure to properly line the 5/6 switch for the intended movement. The grievor is in a safety critical position and was at least in part responsible for the derailment. The Company has not provided clear evidence that Mr. Nenasheff was solely responsible for that error nor why only he was disciplined for it. It appears from the evidence that there was joint responsibility. Mr. Chrunik was near the switch and believed it was lined for Track 6. In addition however, the grievor conducted a job briefing, was responsible for the communication and the

safe operation of the movement and the equipment, and was responsible for and did direct Mr. Chrunik. In this case, I cannot agree with the union that Mr. Chrunik alone was responsible for the error. The grievor had a significant responsibility to ensure that the track was properly lined.

In addition to asserting that the yard helper alone was responsible for the derailment, the Union argues the unjustifiable and inequitable application of discipline. It relies on **CROA&DR 905** and **3581**, both cases dealing with the uneven application of disciplinary penalties. The issue goes to penalty and not to whether the offence was committed. In those cases penalty was reduced in consideration of discipline applied in an unfair manner.

The grievor does have a significant disciplinary record with fifty active demerit points. The grievor's involvement in this incident is deserving of discipline, and the assessment of even ten demerit points would have resulted in an accumulation and the grievor's discharge

However, in view of the fact the penalty was assessed against the grievor alone, when I find that the evidence does not support that he alone was responsible for the error, the penalty of discharge is to be reduced and the grievor to be returned to service. However, in these circumstances no award of compensation is made.

In the result, the grievance is allowed, in part. The twenty demerits are to be removed from the grievor's record. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for any wages and benefits lost.

February 11, 2015

A handwritten signature in cursive script that reads "Marilyn Silverman".

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MARILYN SILVERMAN  
ARBITRATOR