

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

CASE NO. 4361

Heard in Montreal, February 10, 2015

Concerning

CANADIAN PACIFIC RAILWAY

And

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

DISPUTE:

Dismissal of Mr. S. Campbell.

JOINT STATEMENT OF ISSUE:

On April 28, 2014, the grievor S. Campbell, was dismissed from Company service for his failure to ensure the proper Sub-Foreman protection was in place and his failure to ensure the safety of employees under his charge while employed as an EGF on the Manitoba Distribution Crew, April 21st, 2014 on the Bredenbury Sub. A grievance was filed.

The Union contends that the grievor has taken full responsibility for his actions on April 21, 2014. That discipline assessed to the grievor was excessive and unwarranted in the circumstances.

The Union requests that the grievor be reinstated into Company service forthwith without loss of seniority and with full compensation for all wages lost as a result of this matter.

The Company denies the Union's contentions and declines the Union's request.

FOR THE UNION:

(SGD.) W.Brehl

President

FOR THE COMPANY:

(SGD.)

There appeared on behalf of the Company:

B. Medd –Labour Relations Officer, Calgary

And on behalf of the Union:

L. G. Wilson – President, Ottawa

L. Schiavo – President LL2697, North Bay

AWARD OF THE ARBITRATOR

1. The Grievor, Scott Campbell, has six years seniority. He was assessed 60 demerits for the misconduct that is the subject of the grievance. At the time of the incident that led to the discipline, the Grievor had 45 demerits.

2. The Grievor's demerits were: 15 demerits (issued January 22, 2013) for his involvement in a failure to obtain protection, verbal or TOP (Track Occupancy Permit), before traversing an interlocking while he was operating a Brandt truck; 30 demerits (issued May 17, 2013) for "your failure to ensure proper track occupancy protection was obtained and in place, your failure to issue an 'emergency call' and your failure to ensure the safety of employees under your charge while employed as an Extra Gang Foreman, after Ballast Regulator 3211-46 experienced brake failure and slid beyond the limits of the existing TOP".

3. As background, the Grievor had about six months experience as an Extra Gang Foreman (four months in 2013 and two months in 2014) prior to the latest incident. Approximately two months prior to the grieved discipline, on February 18, 2014, the Grievor completed a Rules refresher course.

4. The two primary mechanisms for ensuring track protection that CP employs over designated sections of track or territories are a Centralized Traffic Control (CTC) system and an Occupancy Control System (OCS). The incident involving the Grievor occurred in OCS Territory. OCS uses an integrated cross function system where a Rail Traffic Controller (RTC) supervises the OCS Territory by means of clearances, TOPs, General Bulletin Orders (GBOs) and other instructions as may be required.

5. On April 21, 2014, the Grievor was acting in the role of Foremen in OCS Territory on the Bredenbury Sub. He received verbal confirmation that Sub-Foreman Decroliere was clear of mile 98. He failed to change the Sub-Foreman's TOP limits in writing. He then proceeded to clear CP 6016, a work train, over the Sub-Foreman's written TOP limits. Recognizing the violation of the Sub-Foreman's TOP limits, Assistant Roadmaster Kallie Campbell made an emergency broadcast to stop CP 6016. The Grievor admitted his culpability for the incident.

6. The Grievor had verbally confirmed that the Sub-Foreman would stay between mile 103 and 98 when he cleared train CP 6016 to enter from mile 95 to 98. There was therefore no risk of actual harm since the verbal instructions were appropriate. His error was to not make a written amendment to the TOP. He explains he was multi-tasking and so failed to attend to it. He knew his obligations were to establish the location of the Sub-Foreman and document it on the form, write new arrangements, cancel the old ones, and document the changes on the form. He was regretful of his misconduct, understanding its seriousness.

7. The jurisprudence establishes that significant discipline is appropriate for this failure because it is a serious safety infraction: **CROA 3006, CROA 4050/4052, AH 548, AH 567, CROA 2487, CROA 2672, CROA 2876, CROA 3555, CROA 3992, SHP 594, SHP 598**. The Grievor's omission had no dangerous consequences in this case, though it might have, hence the need to impose discipline.

8. In **CROA 3992**, a second failure to observe TOP restrictions within a seven month period resulted in a 13-year employee's reinstatement without compensation, with a demotion to a position in which the employee had no responsibility for holding TOPs for so long as CP considered appropriate.

9. The factors that mitigate the penalty in this case are threefold. The first is that there was no actual danger of harm because of the verbal instructions given by the Grievor. His failure was to confirm those verbal instructions into the written record. The second is genuine remorse for, and acknowledgement of, his error. He gave an explanation for his misconduct, but, in doing so, he did not suggest any less culpability for his wrongdoing. The third is that the Grievor's current 45 merits are the only demerits in his career with the Company. He was five years discipline free, showing he is capable of complying with the rules of employment for a sustained period.

10. Having considered all the facts and circumstances in this case, the grievance is allowed, in part. The grievor is to be reinstated in employment, without loss of seniority and without compensation for wages and benefits lost. He is returned to a demoted position in which he has no responsibility for holding track occupancy permits. That condition is to remain until such time as the Company deems it appropriate to change it. The period between the grievor's termination and reinstatement is recorded as a suspension for the events of April 21, 2014.

11. The Grievor's record is set at 45 demerits from when those earlier demerits were incurred, less the period of suspension.

February 17, 2015



**CHRISTOPHER ALBERTYN
ARBITRATOR**