

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

CASE NO. 4363

Heard in Montreal, February 11, 2015

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The 30-day suspension of Locomotive Engineer Vince Maggio.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

Following an investigation, the Grievor was assessed with a 30-day suspension from Company service for "conduct unbecoming as evidenced by your failure to ensure a prompt and accurate tie up from duty resulting in an inaccurate and inappropriate 10-hour violation and subsequent \$80.00 NG claim for your tour of duty on October 13, 2013 and stat holiday ticket on October 14, 2013 while working as a Locomotive Engineer on train 420-20 in Schreiber Ontario".

The Company relied on video taken at Schreiber Station and Computer logging to impose unjust discipline on the Crew. The Union objects to the Company's use of video cameras at Schreiber Station in order to engage in surveillance of its members and impose discipline. The video is inaccurate, misleading, intrusive, and a violation of the Collective Agreement, privacy rights, and statute including the *PIPEDA*. The Union objects to the video evidence and asks it be excluded.

The Employer is in violation of Article 24.06, having ordered the crew to run light engines back to White River approximately 60 miles, to wye their power and then run light engines back to Marathon.

It is the Union's position that the Company wrongly assessed a 30-day suspension in these circumstances. The suspension was unwarranted. The Union seeks full redress. The Union asks that the Company expunge the 30-day suspension without pay and make Mr.

Maggio whole for all wages/benefits lost including any benefits Engineer Maggio may have been denied pursuant to grievance 501.02.325. In the alternative, the discipline was excessive in all the circumstances and the Union asks that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and denies the Union's request.

FOR THE UNION:

(SGD.) J. Campbell

Vice General Chairperson

FOR THE COMPANY:

(SGD.)

There appeared on behalf of the Company:

N. Hasham
L. Bryson
G. Parmar

– Legal Counsel, Toronto
– Assistant Superintendent, Brandon
– Director Crew Management Centre, Calgary

And on behalf of the Union:

K. Stuebing
J. Campbell
N. Veneziano
W. Apsey
T. Tubman

– Counsel, Caley Wray, Toronto
– Vice General Chairperson, Toronto
– Local Chairperson, Thunder Bay
– Vice General Chairperson, Smith Falls
– Local Chairperson, Terrace Bay

AWARD OF THE ARBITRATOR

1. The Union is not pursuing the grievance regarding the application of Article 24.06. The two issues are the Company's entitlement to reply upon the video surveillance evidence, and the fairness of the discipline of a 30-day suspension issued to Mr. Maggio.

2. The facts in this matter are identical to those in **CROA 4362**, as are the parties' submissions. I do not repeat them here. Mr. Commisso tied up for Mr. Maggio, as explained in **CROA 4362**. It is normal to have one of the crew tie up for both of them.

3. The conclusions reached in **CROA 4362** apply equally to this grievance. For the same reasons, the grievance is upheld. The 30-day suspension issued to Mr. Maggio is set aside. Mr. Maggio is to be made whole for any loss incurred as a result of the suspension.

4. I remained seized of the implementation of this award.

March 5, 2015

A handwritten signature in blue ink, appearing to read "Albertyn", is positioned above a horizontal line.

**CHRISTOPHER ALBERTYN
ARBITRATOR**