

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4380

Heard in Calgary, March 11, 2015

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the dismissal of Trainman J. Rousseau effective February 28, 2013.

JOINT STATEMENT OF ISSUE:

Following an incident on January 21, 2013, Trainman J. Rousseau was removed from service pending the results of post incident substance testing. On February 4, 2013, Trainman Rousseau was informed of the negative results of the substance testing and was informed he was being withheld from service pending a formal investigation.

Following the formal investigation, Trainman Rousseau was dismissed from Company service for "your failure to ensure that a proper job briefing was conducted, a Critical Safety Rule Violation, and for your failure to ensure that the point of your movement was properly protected before instructing your Locomotive Engineer to shove westward, resulting in your movement shoving out the west end of track 6A and causing a collision with train 463-21 thus derailling 2 cars and causing damage to 5 other cars, a violation of CROR General Rule A (i), (iii), (vi), (vii), CROR General Rule C (i), CROR Rule 114 (a), (b), CROR Rule 106, CROR Rule 115 (a), (b) and Safety Rule Book for Field Operations item T-0, during your tour of duty on January 21, 2013, while working as a Trainman on assignment K64-21, in Swift-Current, Saskatchewan."

The Union contends that the discharge assessed to Trainman Rousseau is unjustified unwarranted and excessive in all of the circumstances. In addition, the Union contends that Trainman Rousseau was wrongfully held from service in connection with this matter contrary to Article 70.05 of the Collective Agreement and the June 16, 2010 agreement with respect to post-incident drug testing.

The Union requests that the discipline be removed in its entirety, that Trainman Rousseau be ordered reinstated forthwith without loss of seniority and benefits, and that he be made whole for all lost earnings. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and denies the Union's requests.

FOR THE UNION:
(SGD.) D. Fulton
General Chairperson

FOR THE COMPANY:
(SGD.) M. Thompson
Labour Relations Officer

There appeared on behalf of the Company:

- L. Smeltzer – Labour Relations Officer, Calgary
- J. Bairaktaris – Director, Labour Relations, Calgary
- B. Medd – Labour Relations Officer, Calgary

There appeared on behalf of the Union:

- K. Stuebing – Counsel, Caley Wray, Toronto
- D. Fulton – General Chairman, Calgary
- D. Edward – Vice General Chairman, Medicine Hat
- B. Pitts – Local Representative, Moose Jaw
- J. Rousseau – Grievor, Dryden

AWARD OF THE ARBITRATOR

This case involves the dismissal of Trainman Rousseau for the violation of operating rules resulting in a collision. The grievor is a short service employee with less than one year of service.

On January 13, 2013, the grievor was working in the Swift Current yard. The grievor was unable to see the West end of track 6A. Nonetheless the grievor instructed the locomotive engineer to shove cars into that track which resulted in a collision with cars that were there. The grievor should have known cars were there had he been abiding by the appropriate rules and ensuring the point of movement was properly protected. Two cars were derailed and three were damaged. The Company assessed the damage to be in excess of \$140,000.

There is no dispute that the grievor should have been protecting the point of movement and in a position to see the west end of the track. The grievor says he had a lapse in judgment and confused tracks 6A and 7A. He admitted that he could not see the point of the movement. He is sorry and understands the severity of this incident and

the importance of adherence to the CRO Rules. The Union contends that the outright discharge of the grievor is an excessive response to his misconduct.

The Company contends that any discipline short of discharge would undermine the importance of the CRO Rules to an employee occupying a safety critical position. It says that the employment relationship is irreparably damaged and that the grievor was either unable or unwilling to comply with the CRO Rules. It relies on **CROA&DR 4351** and **3655**.

The two cases the Company relies upon (**CROA&DR 4351** and **3655**) involve the discharge of employees for the accumulation of demerit points after cardinal rule violations. In both cases the grievors had previous discipline for Rules violations, they were assessed demerits and were discharged for accumulation.

In contrast, with this case the grievor was not subject to progressive discipline. Although he was a short service employee, he had no disciplinary record.

The grievor understands what he did, and appreciates the seriousness of his mistake and knows he has to be more diligent. The consequences of the grievor's error were costly to the Company. There is no doubt that a disciplinary response is warranted, but in view of the **CROA&DR** jurisprudence and the facts of this case, the Arbitrator finds it appropriate to substitute the discharge with thirty-five demerit points.

Accordingly, the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith without loss of seniority. However, this was a serious mistake committed by a very junior employee and in these circumstances, I make no award of back pay. The grievor's discharge is to be substituted with thirty-five demerit points, which is to be reflected on his record.

March 23, 2015



MARILYN SILVERMAN
ARBITRATOR