

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

**CASE NO. 4384**

Heard in Calgary, March 12, 2015

Concerning

**CANADIAN PACIFIC RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The discharge of Locomotive Engineer Brian Lancaster.

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

On January 15, 2014 the Grievor was dismissed from Company service for: "disregarding CROR Rules 112, 106, General Notice, General Rule A and Revised GOI Section 4 (replacing Section 14) as evidenced by not testing the brake effectiveness of railcar RGCX 46156 in track 2, resulting in an uncontrolled movement contacting CEFX81100 on the A end south side in the west end of track 4 at Exshaw on December 9, 2013."

The Union denies that the Grievor disregarded any Rules or GOIs. The Union acknowledges there was a breakdown in communication which was the shared responsibility of all crew members. The Union submits that the penalty of termination is discriminatory, unwarranted and remarkably excessive in all of the circumstances.

The Union also contends that the Grievor's right to a fair and impartial investigation was denied as critical evidence was not disclosed to the Union. Accordingly, the discipline imposed should be declared void ab initio.

Finally, the Union contends that the Company has failed to apply the principles of progressive discipline in the instant case.

For any and all of the foregoing reasons the Union submits that the grievance ought to be allowed and the Grievor reinstated with full compensation for all losses. In the alternative, the Union contends that the penalty of termination was inappropriate in all of the circumstances and the Grievor ought to be reinstated on terms the arbitrator deems appropriate.

**FOR THE UNION:**

**(SGD.) G. Edwards**  
General Chairman

**FOR THE COMPANY:**

**(SGD.)**

There appeared on behalf of the Company:

- S. Lang – Legal Counsel, Calgary
- C. Wolack – Assistant Superintendent, Calgary
- B. Medd – Labour Relations, Officer, Calgary

And on behalf of the Union:

- K. Stuebing – Counsel, Caley Wray, Toronto
- G. Edwards – General Chairman, Calgary
- G. Lawrenson – Local Representative, Calgary
- B. Lancaster – Grievor, Calgary

**AWARD OF THE ARBITRATOR**

The grievor, a Locomotive Engineer employed for thirty years, was discharged for not testing the effectiveness of a handbrake on a rail car.

On December 9, 2013 the grievor was on assignment with a trainman and a conductor as part of a crew. The crew was in the process of switching cars. The conductor lifted the handbrake on a car behind the one the crew was on. The conductor then closed the angle cock on the car and asked for some slack to pull the pin on the remaining car. As a result, the rail car rolled back and made contact with another rail car. It was later determined that the car upon which the grievor and the conductor were riding had a faulty hand brake. Had the crew tested the effectiveness of the hand brake, they would have found this out.

The investigation material discloses that neither the grievor nor his crew had tested the effectiveness of the handbrake. The grievor said that when the conductor

asked him for the pin, the grievor assumed that the handbrake test had been done. He admits he should not have made that assumption. The grievor expressed regret for the incident.

The conductor was also terminated, but later reinstated for pension purposes; the trainman, who had been on another car obtaining water at the relevant time was not disciplined.

It is undisputed that there is a necessary and substantial emphasis on protecting against unintended movement because of the serious consequences that can occur. One of the fundamental procedures that must be followed diligently by employees is to ensure that brakes are tested for effectiveness. CROR 112 provides as follows:

**112. LEAVING EQUIPMENT UNATTENDED**

**(a)** Equipment must be secured if it is left unattended. The following are acceptable methods of ensuring securement:

- (i) Sufficient number of hand brakes;
- (ii) A mechanical device approved for use by a professional engineer;
- (iii) Equipment is left on a track designed to prevent the equipment from moving unintentionally (e.g. switching bowl or where grade does not allow) and that design is approved by a qualified employee;
- (iv) Equipment is derailed or coupled to derailed equipment;
- (v) A movement secured as per paragraph (c) in this rule.

**(b)** While switching enroute, the standing portion must be protected as per paragraph (a) unless:

- (i) There are at least 15 cars;
- (ii) Not on a grade in excess of 1.25 %;
- (iii) The equipment will not be left in excess of 2 hours;
- (iv) The air brake system is sufficiently charged to ensure proper air brake application; and
- (v) The brake pipe is fully vented at a service rate or an emergency application of the air brakes has been made, and the angle cock is left fully open.

Whenever it is possible that the portion left standing cannot be secured within the applicable time limit, the standing portion must be secured as per paragraph (a).

**(c)** A movement may be left unattended if:

- (i) Secured as per paragraph (a); or
  - (ii) Left at a location where a derail protects the movement from unintentionally obstructing main track and
    - The air brake system is sufficiently charged to ensure proper brake application;
    - The locomotive controlling the air brake system maintains air pressure.
    - A full service or emergency air brake application is made; and
    - Independent brake is fully applied; or
  - (iii) Air brake system is sufficiently charged to ensure a proper brake application and
    - The locomotive controlling the air brake system maintains air pressure;
    - A full service or emergency air brake application is made;
    - Independent brake is fully applied;
    - Hand brakes are applied on 10 percent of the equipment to a maximum of 5;
    - It is not on a grade exceeding 1.25%; and
    - Is not left in excess of 2 hours.
- (d)** Exceptional weather situations, such as high winds or other unusual conditions, must be considered and factored into securement decisions. Special instructions may contain location specific instructions where extreme weather events are prevalent.
- (e)** Instructions governing testing the effectiveness of hand brakes will be carried in special instructions.
- (f)** Application of hand brakes must not be made while equipment is being pulled or shoved.
- (g)** Before leaving equipment at any location, the employee securing such equipment must confirm with another employee the manner in which the equipment has been secured.

The Union argues that the investigation was not fair and impartial because the information report regarding the defective handbrake was not produced for the investigation and further was raised by the investigator during the questioning of the grievor. The Union submits that the investigator had relevant information, thus impacting on a fair and impartial investigation. It relies on the decisions in **CROA&DR 3061, 3167, SHP 432.**

In this case, the relevant issue to the discipline is that the crew did not test the handbrake, not that the handbrake was defective. In particular, the investigation material discloses that the grievor admitted that he and his crew did not test the effectiveness of the handbrake. Moreover, the cases relied upon by the Union in asserting a lack of a fair and impartial investigation (**CROA&DR 3061, 3167, SHP 432**) are ones where the investigating officer was a witness. That is not the case here where the investigating officer simply conveyed information he had obtained as to the faulty brake report.

After the incident the Trainmaster ordered a re-enactment which resulted in a much more serious incident; a collision. That re-creation on the part of the Trainmaster was clearly a mistake. The Union relies on the fact that the Company has not disclosed what, if any, discipline the Trainmaster received as a result. It says that the disparity in treatment between the grievor and the Trainmaster and severity of the discipline assessed against the grievor is unfair. The Union relies on the decision in **CROA&DR 4341** where this Office reduced demerits assessed in the context of a disparity in culpability for a Rules violations. The Company contends that its discipline of managerial employees has no bearing on this issue.

The Union also highlights that the grievor was not directly responsible for securing the lone car in question, and contends that he was entitled to rely on information from his crew. The Union advises of other discipline of employees for Rule

violations similar to that in this case. In one instance an employee was issued thirty-five demerit points and another a four day suspension.

The Company relies on the grievor's disciplinary history. Although the grievor stood at 15 active demerits, he served a period of suspension as a result of a reinstatement after a discharge, one year before the incident. The Company relies on the doctrine of culminating incident.

It is clear that discipline is warranted. Ensuring the effectiveness of the brakes is of crucial importance. The crew was responsible for testing the effectiveness of the brakes. Even though there was a communication error between the grievor and the conductor, the grievor knew that he should not have made the assumption that he did that when the conductor said to pull the pin. The responsibility rests with the entire crew to ensure this important check is undertaken.

The grievor is a long service employee. The grievor readily admitted and took responsibility for his actions. The Company acknowledges that a similar incident by an employee with a good discipline record would lead to a lengthy suspension rather than dismissal but argues this was a culminating incident.

When viewing the grievor's record as a whole, at the time of the incident, the grievor stood at fifteen active demerits. In his thirty years of service, the grievor had no discipline in the periods 1984-1991 and again from 1995-2008. The recent period of

suspension relied upon by the Company was not the result of an operating Rules violation. The discharge of a thirty year employee in these circumstances was not warranted. A seven day suspension is substituted for the discharge.

Accordingly the grievance is allowed in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith without loss of seniority and with compensation for all wages and benefits lost, save for the seven day period of suspension.

March

24,

2015

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

MARILYN SILVERMAN  
ARBITRATOR