

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4390**

Heard in Calgary, May 12, 2015

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the discharge of E. Allen for accumulation of demerits following the assessment of forty demerits.

JOINT STATEMENT OF ISSUE:

The facts are not disputed between the parties. On November 26, 2014, Mr. Allen was assigned as the Conductor on train L54631 26. During the course of this assignment his train entered the limits of a PNR Foreman on the Uxbridge Subdivision without permission.

Mr. Allen was required to attend a formal employee investigation, following which he was assessed forty demerits for "entering of PNR foreman's limits on the Uxbridge Sub. without authority while working L54631-26 as a Conductor". His employment was subsequently terminated for an accumulation of demerits.

The Union contends that the discipline assessed was unjustified, unwarranted and in any case excessive in all of the circumstances, including mitigating circumstances. The Union requests that the Company immediately reinstate Conductor Allen without loss of seniority or benefits and all records of the discharge are removed. The Union further requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and declines the Union's request.

FOR THE UNION:
(SGD.) J. Robbins
General Chairman

FOR THE COMPANY:
(SGD.) V. Paquet
Labour Relations Manager

There appeared on behalf of the Company:

V. Paquet	– Labour Relations Manager, Toronto
M. Marshall	– Senior Labour Relations Manager, Toronto
A. Blokzyl	– Assistant Superintendent, Toronto
R. Helmle	– Manager CMC Eastern Canada, Toronto
K. Morris	– Senior Manager Labour Relations, Edmonton
P. Payne	– Manager Labour Relations, Edmonton
T. Brown	– General Manager, Edmonton

J. Crevier – Nurse Case Manager, Edmonton
 R. Baker – Supervisor, Edmonton

There appeared on behalf of the Union:

M. Church – Counsel, Caley Wray, Toronto
 J. Robbins – General Chairman, Sarnia
 J. Lennie – Vice General Chairman, Port Robinson
 R. Donegan – General Chairman, Saskatoon
 R. Thompson – Vice General Chairman, Saskatoon
 K. Christie – Vice Local Chairman, Edmonton
 E. Allen – Grievor, Toronto

AWARD OF THE ARBITRATOR

The grievor, Ewart Allen, is a conductor and has worked for the Company for twenty-three years. He was issued forty demerits for entering the limits of a PNR foreman without permission. As a result, he was discharged for accumulation of demerits.

On November 26, 2014, while working as a conductor out of Oshawa, the grievor was responsible for obtaining a work authority to reverse the direction of the movement of his train between Scarborough and Underwood on the Uxbridge subdivision. The grievor obtained the work authority but also was given a “protect against” restriction for a foreman who was working within the same limits and had previously been given exclusive use of the track. Therefore, anyone needing to travel within the limits of the track for which the foreman had authority, required his permission. Although advising the crew of his work authority, the grievor failed to advise the crew of the protect against – that is the restriction stated in the work authority. As a result, the train for which the grievor was the conductor began operating over the Uxbridge subdivision without

contacting the foreman. Over a mile into the foreman's limits, the grievor realized his error and ordered the train stopped. He said that he was focused on workload issues. Both the locomotive engineer and the brakeman on the grievor's crew were issued forty demerit points as well.

At the investigation meeting the grievor said he told the crew the limits of the authority but not the restrictions on it. He left the paperwork on a desk and did not review it with his crew. Once stopped the grievor said he ask the engineer to initiate an emergency call and the grievor dressed to go flagging in accordance with the rules. Neither of the emergency call nor the flagging were confirmed in the evidence. However, at the investigation the grievor said that the explanations offered for the error was not an excuse and that he understood the "gravity and magnitude of the situation". Too, at the hearing he expressed remorse and responsibility for the mistake.

The grievor has discipline on record. At the time of the incident he stood at forty demerits, three written reprimands and a seven-day suspension. The Company highlights that the seven-day suspension, issued one month before this incident was for Rule violations. However, the Union highlights there were no Cardinal Rule violations.

The grievor's infraction was serious, a Cardinal Rule violation and created a dangerous situation. The entire crew was responsible for reading and understanding the authority as contained in CRO Rule 142:

142. Understanding between Crew Members

- (a) Every conductor, locomotive engineer, remote control operator, pilot and snow plow foreman must read and have a proper understanding of all GBO and clearances as soon as possible after they have been received. Each must be made available to other crew members, as soon as practicable, ensuring that each crew member has read and understands them and, when required, the arrangements for protection between crews and between foremen and crews.
- (b) Crew members within physical hearing range are required to remind one another of the restrictions contained in GBO and clearances in sufficient time to ensure compliance.

In addition GOI Section 8.12.15 paragraph 8 specifies:

Type of Protection or Authority Required

Once received, the Protection or Authority document must be made available, read, and understood by all crew members. If this information is conveyed via radio, it must be confirmed with "that is correct".

The Company relies on **CROA&DR 3472** where this Office upheld the issuance of forty-five demerits for entering limits without authority. The Company also says that this incident, coupled with the grievor's record demonstrates that progressive discipline failed to bring home to the grievor the seriousness of his conduct and a substitution of penalty is not warranted. The Company notes that even the issuance of twenty demerit points would have resulted in discharge for accumulation.

The Union relies on the fact that the grievor had not previously been assessed disciplined for a cardinal rules infraction. It cites the decisions in **CROA&DR 3924, 758, 2672, 2767 3201** and **2838** in support for the mitigation of the penalty of discharge.

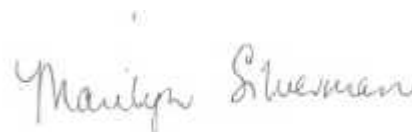
The grievor's infraction was extremely serious. It represented a danger to himself, his crew, and those working within the limits of the authority. The grievor works

in a safety sensitive operation and he did not pay sufficient attention his job. The only issue is whether there exists sufficient reason to mitigate the penalty of discharge in this case.

The grievor has over twenty-three years of service for the Company and has spent his entire working life as an employee of CN. He acknowledged that his explanations were not excuses for what occurred and he did accept responsibility for the incident. The grievor has had substantial periods without discipline in his service for the Company. Having considered his disciplinary record overall and in light of the factors and jurisprudence noted above, I am prepared to substitute the penalty of discharge.

The grievance is allowed in part. The Arbitrator directs that the grievor be reinstated into employment forthwith, without loss of seniority and without compensation for any wages and benefits lost. The time between his termination and reinstatement shall be recorded as a suspension for the violation. His disciplinary record shall stand at forty demerits.

June 26, 2015



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MARILYN SILVERMAN
ARBITRATOR