

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4395**

Heard in Calgary, May 13, 2015

Concerning

CANADIAN NATIONAL RAILWAY

And

UNITED STEELWORKERS – LOCAL 2004

DISPUTE:

The assessment of twenty demerit points to Mr. G. Hurst's discipline record for the failure to wear proper PPE (no face shield or leg protection) while cutting rail on September 10, 2014 and consequently discharged for the accumulation of over sixty demerit points.

JOINT STATEMENT OF ISSUE:

The Union submitted an appeal contending that the discipline assessed was unwarranted, arbitrary and discriminatory leading to the unjust, unwarranted, discriminatory discharge.

On January 7, 2015 the Company disagrees with the Union's contentions and has declined the Union's request.

FOR THE UNION:
(SGD.) P. Jacques
Regional Chief Steward

FOR THE COMPANY:
(SGD.) B. Laidlaw
Manager Labour Relations

There appeared on behalf of the Company:

B. Laidlaw	– Manager Labour Relations, Winnipeg
R. Hasbroock	– Senior Manager Engineer, Prince George
D. Greer	– Assistant Track Supervisor, Wainwright
S. Boyko	– Track Supervisor, Grande Prairie

There appeared on behalf of the Union:

P. Jacques	– Chief Steward Mountain Region, Edmonton
G. Hurst	– Grievor, Fort St. John

AWARD OF THE ARBITRATOR

The grievor, Geoff Hurst, was assessed twenty demerit points for not wearing proper personal protection equipment (PPE) and as a result, terminated for accumulation.

The grievor began working for the Company in 2007 when it acquired his previous employer B.C. Rail for whom the Grievor had been working since 1987. He works as a Track Maintainer/Truck Driver.

On September 10, 2014 the grievor was observed by two supervisors using a mechanized rail saw without wearing a face shield or leather leggings. The grievor was wearing other PPE (personal protective equipment) for the job he was performing which was a hard hat, ear plugs, safety vest, safety glasses and work gloves. However, there is no dispute that the grievor was clearly in violation of CN General Engineering Instructions 3.0 and General PPE requirements by not wearing his face shield or leather leggings. At the time of the infraction the grievor's disciplinary record stood at fifty-five demerit points. The assessment of twenty demerit points for the PPE infraction resulted in his discharge from employment. The Union does not dispute that the grievor was in violation of a safety rule.

At the investigation meeting, a memo from another employee was provided stating that the grievor knew he was cutting the rail without the proper PPE. Further,

although the grievor at the investigation meeting said he did not recall his exact words, his supervisor said the grievor acknowledged after the incident that he should have had a face shield. Evidence was also presented of the grievor's attendance at a tailgate meeting held on November 27, 2013 when PPE use when cutting rail was reviewed. At the conclusion of the investigation meeting the grievor said he now knew of the requirement and was sorry the incident happened.

The Union contends that the grievor did not recall the GEI refresher quiz. It also suggests some inconsistency on the part of the Company which is not borne out by the material.

The Company emphasizes that safety is a priority at CN. It says that the twenty demerit points is in the appropriate range for this infraction. It asserts that progressive discipline has had little effect on the grievor.

The grievor's safety infraction was clearly deserving of discipline and twenty demerits are in the appropriate range. Employees are required to adhere strictly to safety rules, including the wearing of proper PPE in order to prevent accident and injury. In addition, the grievor's recent disciplinary record is unenviable. But, the grievor has worked in the railroad for the Company and its predecessor for a total of twenty-eight years and that weighs in his favour. In addition, although the grievor's recent disciplinary record is unenviable, he worked for the Company in the period from 2008 to 2012 without discipline.

The Arbitrator is therefore prepared to reinstate the grievor to employment and provide him with the opportunity to continue his employment without incident. The grievance is therefore allowed in part. The Arbitrator directs that the grievor be reinstated into his employment, without loss of seniority and without compensation for any wages and benefits lost. The twenty demerits issued for this infraction are to be removed from the grievor's record and substituted with a period of suspension from the date of the grievor's discharge to the date of his reinstatement.

June 15, 2015

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

MARILYN SILVERMAN
ARBITRATOR