

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

CASE NO. 4396

Heard in Calgary, May 13, 2015

Concerning

CANADIAN NATIONAL RAILWAY

And

UNITED STEELWORKERS – LOCAL 2004

DISPUTE:

Suspension assessed to J. Poole for failure to replace ties in Track 78 Grande Prairie Yard, as instructed by his Supervisor on May 15, 2014, and failing to advise your supervisor that the work was not completed.

JOINT STATEMENT OF ISSUE:

The Union contends that the discipline is arbitrary and excessive given the circumstances.

The Union requests that the suspension be expunged and that Mr. Poole be made whole for all lost earnings and benefits including pension benefits.

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
S. Boyko	– Track Supervisor, Grande Prairie
D. Greer	– Assistant Track Supervisor, Wainwright
R. Hasbroock	– Manager Engineering, Prince George

There appeared on behalf of the Union:

P. Jacques	– Regional Chief Steward, Edmonton
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AWARD OF THE ARBITRATOR

The grievor, John Poole, was suspended for failing to replace the ties as directed by his supervisor and failing to advise his supervisor that he had not done so.

The grievor has been with CN since 2011 and worked with a previous employer from 2007 when it was acquired by CN. He is a Track Maintenance Foreman.

The material discloses that on May 15, 2014 the grievor was told by his supervisor to replace defective ties on a track. The grievor said he would obtain the ties and do so. A few minutes later the supervisor saw the grievor and told him again that the ties needed to be replaced. The supervisor told the grievor that he would meet him at the spot where the ties were required. The grievor did not attend at that spot when the supervisor was there and so the supervisor marked the spots where he wanted the ties replaced and left.

Shortly after the grievor approached the trainmaster to obtain access to the track where the ties needed replacing and the trainmaster said the yard was using the track and they might have to wait until the next day. The grievor left and took no further action.

On May 19, 2014 the supervisor noticed that the work had not been done and it was then performed by another foreman and a contractor.

When the supervisor confronted the grievor as to why the work had not been done, the grievor responded that he could not get track time and the trainmaster told him it would get done the following day. When the grievor was asked why he did not tell his supervisor that the work was not done, he said that he did not have a phone.

The grievor was assessed twenty demerit points for failure to follow the instruction and to notify the supervisor that he had not done so. As the grievor's record stood at fifty-nine demerit points he was discharged for accumulation. The Company subsequently reduced the twenty demerits and discharge for accumulation to a time served suspension. The grievor returned to work on September 2, 2014.

The Company says the discipline was warranted for the infraction as the grievor did not do the work assigned and did not advise his supervisor that it had not been done. The Company says that the track was in an unsafe condition, that the ties needed to be replaced. The Company says its decision to reinstate the grievor and substitute a period of suspension for the discharge for accumulation based on the twenty demerits assessed for the infraction, was an additional opportunity afforded the grievor consistent with the application of the principles of progressive discipline.

In the investigation material the grievor said he did not realize that the work was critical in nature and that he thought that the supervisor and the trainmaster made a plan for the work.

The Union argues that the critical nature of the work was not made clear to the grievor and that he relied on the trainmaster that it was not possible to change the ties on the day he was assigned to do so.

The Union further contends that the grievor was targeted because of his involvement in the Union; he held a position as Unit Chair. I find is no evidence to support this allegation. The grievor committed a work infraction and was disciplined for that.

The grievor was clearly assigned to do the work. The supervisor was entitled to leave his discussion with the grievor with the understanding that the work would be done. When the grievor decided that that he would not be able to do the work when assigned, because of his conversation with the trainmaster, he had an obligation to advise the supervisor that the assigned work was not done. It would then be up to the supervisor and the trainmaster to address the issue. In this case the grievor was expected to take responsibility for ensuring that work to which he was assigned was done or to inform the supervisor as to why it was not done. As such the disciplinary suspension was warranted, in the circumstances given the grievor's record and the facts of this case.

Accordingly the grievance is dismissed.

Marilyn Silverman

May 29, 2015

MARILYN SILVERMAN
ARBITRATOR