

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4397**

Heard in Calgary, May 14, 2015

Concerning

**CANADIAN PACIFIC RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The assessment of twenty demerits to Locomotive Engineer Steve Cawdell on January 24, 2014 resulting in his dismissal for an accumulation of demerits.

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

On January 24, 2014 Locomotive Engineer Cawdell was assessed twenty demerits for: "failure to properly position yourself on the ground in order to inspect passing way-freight V67-30 at the South Siding Switch Torrent on December 30th 2013, a violation of the CROR General Notice, General Rules A (i) and (vi) CROR User Manual for Train and Engine Employees, Section 2, Item 2.2, CROR User Manual for Train and Engine Employees, Section 11, item 11.5, CROR Rule 110 Inspecting Passing Trains and Transfer Movements, CROR Rule 106 Crew Responsibilities, while employed as a Locomotive Engineer in Cranbrook, British Columbia." The assessment of twenty demerits resulted in Locomotive Engineer Cawdell's dismissal.

The Union contends that the assessment of twenty demerits, resulting in Locomotive Engineer Cawdell's dismissal, was unwarranted, unjustified and excessive in all of the circumstances. Locomotive Engineer Cawdell positioned himself to inspect the passing V67-30 in the safest location he could, on the nose of the lead locomotive, and in accordance with the Rules. Locomotive Engineer Cawdell's positioning was also consistent with his and his fellow employees' practice in this location over numerous years.

The Union is requesting the twenty demerits be expunged from Locomotive Engineer Cawdell's record and that he be reinstated and made whole for all losses. In the alternative, the Union is requesting Locomotive Engineer Cawdell's reinstatement on appropriate terms.

**FOR THE UNION:**  
**(SGD.) G. Edwards**  
General Chairman

**FOR THE COMPANY:**  
**(SGD.)**

There appeared on behalf of the Company:

D. Pezzaniti

– Labour Relations Officer, Calgary

D. Guerin	– Director Labour Relations, Calgary
D. Cote	– Labour Relations Officer, Calgary
R. Chadwell	– Assistant Superintendent, Calgary

There appeared on behalf of the Union:

R. Church	– Counsel, Caley Wray, Toronto
G. Edwards	– General Chairman, Calgary
B. Plant	– Local Chairman, Cranbrook
S. Cawdell	– Grievor, Cranbrook

### **AWARD OF THE ARBITRATOR**

The grievor is a locomotive engineer with sixteen and a half years of service. He was assessed twenty demerits and discharged for accumulation for not performing an inspection of a passing train at the South Siding Switch Torrent as required under CRO Rule 110:

#### **110. Inspecting Passing Trains and Transfers**

(a) When duties and terrain permit, at least two crew members of a standing train or transfer and other employees at wayside must position themselves on the ground on both sides of the track to inspect the condition of equipment in passing trains and transfers. When performing a train or transfer inspection, the locomotive engineer will inspect the near side. When a group of wayside employees is present, at least two employees must perform the inspection.

EXCEPTION: Crew members of passenger trains are exempted from the above requirements except when standing at meeting points in single track territory. However, every effort must be made to stop a train or transfer when a dangerous condition is noted.

The grievor and his conductor were to visually inspect a passing train. These inspections are an important component of train safety and are mandated by Transport Canada. In order to perform an inspection the crew must get off the train and position themselves on the side of the train to look for defects, damage or broken equipment found by Passing Train inspections.

On December 30, 2013 the grievor was observed by the trainmaster having a cigarette on the deck of the lead locomotive, following which the grievor proceeded inside. The trainmaster noted that the grievor failed to inspect the passing rail cars. As a result the grievor failed a proficiency test. The grievor explained to the trainmaster at the time that he returned to his cab to release his brake to allow for a more expeditious departure. The investigation material discloses that the grievor said and understood the need for train inspections, but was trying to balance that need with an expeditious departure.

There is a dispute between the parties as to whether the terrain was safe for the grievor to position himself on the ground to conduct the Passing Train Inspection. The Union asserts that it was not; the Company that it was.

The Union argues that the grievor was within the exception of the first sentence of CRO Rule 110 (a) (“when duties and terrain permit...”) and that he was observing the passing train from the safety of the locomotive. The photographs provided by the Company appear to show there is room to detrain. The Union refers to an “unwritten rule” that inspecting passing trains on the riverside at the South end of Torrent is not a safe action. The grievor said in the investigation meeting, that there was no safe place to stand on the river side. In support, the Union provided two affidavits from other employees attesting to the fact that they do not stand at that location, as the ground on

the river side at the South Siding Switch at Torrent is an unsafe place to inspect passing trains.

The Company relies on jurisprudence from this Office that has found discipline in the range of fifteen to twenty demerits to be appropriate for failure to perform a pull by inspection (see **CROA&DR 4381**).

The Company suggests there are no mitigating factors in this case other than the grievor's length of service. The grievor stood at fifty-five demerit points at the time of this incident. The Company contends that if an employee in safety critical operations continually fails or refuses to follow the rules the Company is justified in ending the relationship.

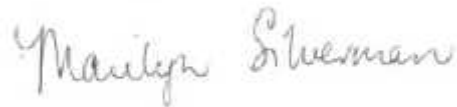
If I accept the Union's evidence that the terrain did not permit the grievor to inspect from the ground, the grievor should at a minimum have performed a full inspection of the passing train from the deck. The grievor did observe some of the passing cars but returned inside after finishing his cigarette, without observing most of the rail cars and so even his inspection from the cab of the locomotive was not adequate. In the grievor's case even a small measure of discipline would place him at a position of discharge for accumulation.

In reviewing the grievor's record, the grievor was discharged for accumulation in 2011 and reinstated with a time served suspension. However, it is notable that his

discharge was for attendance issues. In contrast, his discipline record contains only two rule violations, one in 2006 and one in 2013. Given the facts of this incident, the grievor's length of service and the grievor's disciplinary record as a whole, there is reason to mitigate the penalty of discharge.

The grievance is therefore allowed in part. The Arbitrator directs that the grievor be reinstated into his employment without loss of service or seniority but without compensation for any wages and benefits lost. His disciplinary record shall remain at fifty-five demerits.

June 26, 2015



—  
MARILYN SILVERMAN  
—  
ARBITRATOR