

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4406**

Heard in Montreal, June 9, 2015

Concerning

CANADIAN PACIFIC RAILWAY

And

**TEAMSTERS CANADA RAIL CONFERENCE –
RAIL TRAFFIC CONTROLLERS**

DISPUTE:

Appeal of the dismissal of Rail Traffic Controller J. Godeski on January 27, 2015.

JOINT STATEMENT OF ISSUE:

On December 31, 2014 Rail Traffic Controller J. Godeski attended an investigation for her alleged rules violations during the issuance and verification of Crowsnest Sub clearance number 701 during her tour of duty as the 2300 Alberta South split RTC on December 27, 2014.

Following the investigation, the Company dismissed Ms. Godeski for her alleged fourth career violation of CROR 136c and RTC Manual 8.3 and for violation of CROR Rule 123b for failure to correctly issue and verify clearance number 701 on December 27, 2014 while working the Crowsnest Sub as a Rail Traffic Controller.

The Union's Position: The Union contends that the dismissal for this incident is extremely excessive and not progressive. The Union requests that RTC Godeski be reinstated without loss of seniority and be made whole for all lost wages and benefits.

The Company's Position: The Company disagrees and denies the Union's request.

FOR THE UNION:
(SGD.) S. Brownlee
General Chairperson

FOR THE COMPANY:
(SGD.) S. Smith
Labour Relations Officer

There appeared on behalf of the Company:

J. Bairaktaris	– Director Labour Relations, Calgary
D. Cote	– Labour Relations Officer, Calgary
S. Oddstad	– RTW Specialist, Calgary

There appeared on behalf of the Union:

S. Bownlee	– General Chairperson, Stony Plain
C. Clark	– Vice General Chairperson, Okotoks

AWARD OF THE ARBITRATOR

1. The Grievor was employed on June 11, 2011. She was terminated on January 27, 2015; service of three years and seven months. She is a short service employee.

2. The job of a Rail Traffic Controller (RTC) is safety critical. RTCs are responsible for the safe and secure movement of equipment and personnel within the Occupancy Control System (OCS) limits. Procedures are in place designed to eliminate careless errors because of the serious consequences they might cause. So, for example, crew receiving a General Bulletin Order (GBO), Clearance, Track Occupancy Permit (TOP), other authority, or cancellation from an RTC must copy the message as it is transmitted and repeat what has been copied back to the RTC to ensure its accuracy. As the message is read back to the RTC, the RTC is obliged to press the space bar on their screen as each word or digit is repeated back to them, to ensure its accuracy. Upon verification, a complete time will be generated by the OCS computer and the RTC will voice the complete time with their initials to the crew members, who will then repeat it back to the RTC, as a further check. As the Company points out, this process is designed to check, and to re-check, the information conveyed, to ensure its accuracy, given and received.

3. The reason for these checks on potential errors is that mistakes by RTCs can have catastrophic consequences. The Company needs to be satisfied that RTCs can do their work with great diligence and attention to detail.

4. Until January 1, 2014, the New Equitable Workplace System (NEWS) was in place for RTCs. Under NEWS, a Learning Zone was recognized. The Learning Zone was a two-year period intended to give new RTCs a reasonable opportunity to learn the skills of their position, during which they would not be assessed discipline for procedural errors. The grievor benefited from NEWS from when she was employed until January 13, 2013, when she completed the Learning Zone. Her errors in performance thereafter resulted in discipline.

5. The grievor's record shows that she was given a Learning Zone caution for an incident on November 26, 2011, a CRO Rule 136 (c) violation. Rule 136 (c) reads:

- (c) The RTC must verify each written word and digit each time it is repeated. If correct, the RTC will respond "complete", the time and the initials of the RTC, which will be recorded and acknowledged by the employee copying. The employee copying must acknowledge the complete time by repeating the complete time and the initials of the RTC to the RTC.

6. On June 7, 2014 the grievor was disciplined with a ten-day suspension for failing to deliver a 25mph slow order to a passenger train where the track speed was 95mph, a breach of CRO Rule 152:

152. DELIVERY OF GBO

The RTC must ensure that movements affected by a GBO are issued a copy of the GBO, or are otherwise secured.

7. The Union argues this discipline should not be taken into consideration because it is not a Rule 136 (c) violation. It does, though, show inattention to detail, which is the offence in Rule 136 (c) violations. It is therefore relevant to my consideration of the appropriate discipline in this case.

8. On November 18, 2014 the grievor was found, in an efficiency test, to have breached Rule 136 (c). She failed to observe and correct a crew's incorrect repeat of an OCS authority complete, in time. She was coached on this, not disciplined. Also, on December 18, 2014, the grievor was found, in an efficiency test, to have again breached Rule 136 (c), also for failing to observe and correct a crew's incorrect repeat of an OCS authority complete, in time. She was also coached for this, not disciplined.

9. The incident that resulted in the grievor's termination occurred on December 28, 2014. The grievor misnamed a train. She said "CP8746" when the correct train number was "CP8747". She did not pick up the error when her error was repeated back to her. She completed the authority, erroneously recorded. This was again a breach of Rule 136 (c). This error could have resulted in a delay for the crew receiving the message, until the correct information was obtained. She was terminated for this as the culminating incident.

10. Before terminating the grievor, as an alternative, the Company offered the grievor a transfer to the position of a Crew Dispatcher, less well paid, with twelve-hour shifts (the grievor works eight-hour shifts as an RTC). The Grievor rejected this alternative because

she is a single mother of a seven-year old daughter, and she does not want such long shift periods away from her.

11. The Company argues the grievor can no longer be trusted in such a high risk safety critical position. It says her repeated careless errors give no confidence in her capacity to do what is admittedly a highly exacting position. The Union argues that progressive discipline has not been applied. Besides the grievor's caution received during her Learning Zone, which was not discipline, she has only been coached twice for Rule 136 (c) violations. The Union submits that the grievor's dismissal is her first actual discipline for a Rule 136 (c) violation. There has been no Performance Action Plan (PAP) to assist the grievor to improve her attention to detail. The Union refers to a schedule of discipline assessed for Rule 136 (c) violations by RTCs in the period 2013 to 2015. Depending on the circumstances, the discipline varied from cautions, to fifteen or twenty demerits, to two, three, five, fifteen, or thirty-day suspensions.

12. On the one hand, I am persuaded that progressive discipline has not been applied to the grievor. She has been terminated without interim steps of increasingly severe discipline for the errors in performing her work. No PAP has been developed to assist her. She needs the message to be soundly brought home that the work expected of her is exacting and requires the greatest care and attention to detail. That has not yet been done through progressive discipline.

13. On the other hand, I understand the Company's concern that perhaps the grievor does not have the capacity to perform the work of an RTC with the necessary attention to detail it requires. She is not a long-serving employee who has proved her ability to meet the requirements of a demanding position. She has had notably more Rule 136 (c) violations than the average for RTCs. I am not persuaded, though, that the grievor cannot meet the requirements of the position. There are indications in that direction, but they are not definitive.

14. In my view, progressive discipline needs to be applied to the grievor. The grievance is therefore partially upheld. The discipline for her error on December 28, 2014 is to be recorded as a thirty-day suspension for a Rule 136 (c) violation. She should therefore be given a further opportunity to prove she can do what is required of her as an RTC, to the level of precision expected of the position. As a consequence I order her reinstatement, without loss of seniority. The Company may, if it chooses, implement a PAP to aid the grievor's performance, in consultation with the Union. The Grievor is to be compensated for her loss of earnings, save for the period of thirty days.

15. I remain seized of the implementation.

June 17, 2015



CHRISTOPHER ALBERTYN
ARBITRATOR