

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

CASE NO. 4416

Heard in Montreal, September 8, 2015

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The discharge of Ms. Jeanine Tanguay for accumulation of demerits following the issuance of twenty demerits for violations of CN Form 8960 (train handling) while working as a locomotive engineer on M31641 23 on April 23, 2015.

JOINT STATEMENT OF ISSUE:

On April 23, 2015, Ms. Tanguay was the locomotive engineer working on M31641-23. While operating this train, Ms. Tanguay did not comply with Form 8960 (Train handling policies) and there was a resulting pull apart of train M316. Car AEX-17654 was damaged in this incident and other trains were delayed.

At the time of this incident, Ms. Tanguay's discipline record was at fifty-five demerits. She was investigated for the incident on April 23, 2015 and was assessed twenty demerits. As result, her demerits were in excess of sixty (total demerits seventy-five) and she was discharged for accumulation of demerits.

The Union asserts that Ms. Tanguay did not attempt to deflect responsibility for this incident but was trying to manipulate the controls and air brakes in an effort to control her movement. She had no intent to cause any damage to equipment or delays to other trains. The Union states it was merely an accidental occurrence.

The Union seeks the substitution of a different penalty and reinstatement of Ms. Tanguay.

The Company's position is that Mr. Tanguay did violate Form 8960 and that there was damage to equipment and delay to other trains. Discipline was warranted. The twenty demerits

assessed was reasonable in all the circumstances. Ms. Tanguay's record was at fifty-five demerits. She was therefore discharged for accumulation of demerits in accordance with the Brown's system of discipline. The Company therefore submits that the grievance should be dismissed.

FOR THE UNION:**(SGD.) R. Caldwell**

General Chairman

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

Senior Labour Relations Manager

There appeared on behalf of the Company:

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| D. Larouche | – Manager Labour Relations, Montreal |
| M. Marshall | – Senior Manager Labour Relations, Toronto |
| V. Paquet | – Labour Relations Manager, Toronto |
| J. Malley | – Trainmaster, Capreol |
| C. Michelucci | – Director Human Resources, Toronto |

And on behalf of the Union:

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|-------------|-------------------------------------|
| K. Stuebing | – Counsel, Caley Wray, Toronto |
| P. Boucher | – Vice General Chairman, Belleville |
| J. Tanguay | – Grievor, Hornepayne |
| R. Caldwell | – General Chairman, Bancroft |
| R. Hackl | – Vice President, Ottawa |
| J. Robbins | – General Chairman, Port Robinson |
| J. Lennie | – Vice General Chairman, Sarnia |

AWARD OF THE ARBITRATOR

This grievance concerns the Company's termination of Locomotive Engineer Jeannine Tanguay (the "grievor") on May 1, 2015. The grievor had been employed by the Company in the running trades since 1989 and qualified as a locomotive engineer in 1995. She had approximately twenty-five years of service at the time of her dismissal. The grievor's active discipline record stood at fifty-five demerits when the Company assessed twenty demerits against her. She was therefore dismissed for an accumulation of demerit points under the Brown System of discipline.

The facts are not in dispute.

The parties agree that on April 23, 2015, the grievor was working on train M31641-23. At approximately 21:45 hours she had to enter the Nikina siding to clear the mainline for another train - a time sensitive one - that was going in the opposite direction.

While entering into the siding, the grievor applied the automatic brake while she released the independent brake. As she approached the east end of the siding and its red signal she applied some independent brake to slow her train down further. Though she felt that she had her train under control as it was slowing down, at the rear end of the siding she realized that the train was still occupying the mainline and that she had to pull another 250 feet to clear the mainline. To do so she started to throttle up again. She did so up to position RUN5, thinking (incorrectly) that she had released the independent brake. A train separation occurred and one of the cars was pulled apart, completely damaging it. The damaged car's contents spilled onto the ground.

In throttling up to position RUN5, unaware that she had not released the independent brake, the grievor violated CN Form 8960 ("Form 8960"), which contains train handling guidelines. Form 8960's operating requirements state, among other things, that automatic braking (stretch braking) should be in throttle position RUN4 or less. The grievor was unaware of that requirement. In addition, though the grievor had told the RTC that she had throttled off as she got close to the red signal, in fact she had not. She was trying to but was unable to get to idle because, by that point, the train pulled apart.

As a result of the accident, more than twenty-five hours of delays occurred. Two additional crews were called in so that the Company could resume operations. The car that

pulled apart was completely damaged and there were costs to the Company associated with repair and replacement fees.

At the hearing, the Union made extensive submissions about the grievor's handling of her train. It sought to minimize the extent of her misconduct, suggesting that if the grievor's action were the cause of the separation, the separation would have taken place at the knuckle or the drawbar. The Union argued that the Company could not establish that the minimal application of the brake (which the grievor thought she had released) had any contributory effect on the incident. It argued that the grievor was singled out in spite of her crewmate's shared culpability and that the only mistake the grievor had made was throttling up to position RUN5 rather than position RUN4.

The parties agreed that the grievor did not comply with Form 8960 (train handling policies) - she admitted as much during the investigation - and the parties had already agreed that there was a resulting pull apart of the grievor's train. The Union's submissions during the hearing attempted to downplay the grievor's culpability, but having reviewed the grievance correspondence between the parties, it is clear to me that, up until the hearing, neither the Union nor the grievor attempted to deflect any of her responsibility for the incident. Therefore, this case is not about the grievor's culpability – it is about the appropriate sanction that should be levelled against her.

In my view, the only issue before me is whether it is appropriate for me to disturb the sanction of twenty demerits imposed on the grievor for the violation of Form 8960. The Company urges me to uphold the discipline and argues that the imposition of twenty demerits is entirely reasonable. It directs me to **CROA&DR 3839**, where the Union argued

that twenty demerits is within the range of typical discipline imposed in similar circumstances to the case at hand. In addition, the Company directs me to the grievor's discipline record, which it characterizes as abysmal.

It would be challenging for the Union to argue seriously that the penalty imposed was unreasonable; I accept that twenty demerits is an appropriate disciplinary penalty for the misconduct to which the grievor admitted in this case.

As the grievor's record stood at fifty-five demerits at the time of the incident, she was dismissed for the accumulation of demerits under the Brown System of discipline.

The grievor's discipline record, and in particular her record in recent years, reveals a recidivism relating to train handling issues. In December 2011 the grievor was issued fifteen demerits for aggressive train handling, and three months later, in February 2012, twenty further demerits were imposed for train handling violations leading to a broken knuckle. In addition to further demerits and a suspension imposed in 2012 and 2013 relating to attendance issues, in February 2014, the grievor was discharged for exceeding the permissible speed on a train carrying crude oil. By agreement of the parties, the grievor's discharge was reduced to a five-month suspension. As part of the grievor's reinstatement to work in July 2014, section G of CN form 8960 was reviewed with her; yet the incident at issue in this case relates to a violation of that very form.

I am cognizant the grievor is a long service employee. She is also remorseful and at no time sought to deflect any responsibility for the incident. Without the necessity of going

into specific details, I acknowledge the grievor's personal and financial difficulties as outlined by the Union's brief.

Beyond the grievor's active discipline record, she has been disciplined twenty-one times during her tenure with the Company, and had 180 lifetime demerits at the time of the incident. Her record is far from exemplary.

The Company could have suspended the grievor rather than imposing twenty demerits in this case. That was one option available to the Company. However, the Company has recently suspended the grievor twice, in 2013 and 2014. In doing so, with her demerits standing at fifty-five, the grievor has already been provided with a final opportunity to retain employment - provided she adhered to the rules and operated safely. Having regard to all of the aforementioned circumstances, I am not persuaded that this is an appropriate case to disturb what is undeniably within the range of reasonable responses for the violations of Form 8960.

The grievance is therefore dismissed.

September 18, 2015



**CHRISTINE SCHMIDT
ARBITRATOR**