

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4423

Heard in Calgary, November 11, 2015

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the dismissal of Locomotive Engineer R. Ward of Golden, B.C.

UNION'S EXPARTE STATEMENT OF ISSUE:

On December 20, 2014 Engineer Ward was informed by letter from the Company that he was dismissed from Company service for: Your involvement with the run through switch that occurred December 14th, 2014 while employed as a Locomotive Engineer on the 1600 Road Switcher Assignment (V16-14) in the Golden Yard; a violation of CROR User manual item 4.2 (e), CROR rule 114, CROR rule 104, CROR Rule 106, General Rule A (i)(iii)(vi)(x) and General rule C (i)(ii).

The Union contends the discipline imposed is unwarranted, unjustified and excessive in the circumstances. Based on the evidence presented, the Union asserts the Company has failed to provide just cause that would justify imposing the ultimate penalty of dismissal in this case.

The Union further contends the Company has violated Engineer Ward's rights as contained in the Collective Agreement and cannot be sustained when considering jurisprudence and the concept of progressive discipline.

The Union requests that Engineer Ward be reinstated to active service and that he be made whole for all wages and benefits lost in relation to his dismissal. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

FOR THE UNION:
(SGD.) G. Edwards
General Chairperson

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

D. Pezzaniti	– Officer, Labour Relations, Calgary
J. Bairaktaris	– Director, Labour Relations, Calgary
M. Woodhouse	– Trainmaster, Fort Steele

B. Medd – Manager Labour Relations, Calgary

There appeared on behalf of the Union:

K. Stuebing – Counsel, Caley Wray, Toronto
 H. Makoski – Senior Vice General Chairperson, Winnipeg
 L. Daley – Vice General Chairperson, Revelstoke
 G. Lawrenson – Vice General Chairperson, Calgary
 R. Ward – Grievor, Golden

AWARD OF THE ARBITRATOR

The grievor is a locomotive engineer with twenty years of service. He was discharged on December 14, 2014 for his involvement with a run through switch while working on a road switching assignment in the Golden Yard. The Company relies primarily on CRO Rules 104 (lining the switch), 106 and 114 (fouling other tracks):

104. Hand Operated Switches General

(a) Operation of Switches - semi-automatic, spring, dual control or auto-normal switches operated by hand are considered hand operated switches, and all rules governing hand operated switches apply.

(b) Except while being turned, each switch must be secured with an approved device. When a switch has been turned, the points must be examined and the target, reflector or light, if any, observed to ensure that the switch is properly lined for the route to be used.

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106. Crew Responsibilities

All crew members are responsible for the safe operation of movements and equipment in their charge and for the observance of the rules. Under conditions not provided for by the rules, they must take every precaution for protection. A utility employee becomes a crew member when working with any movement.

....

114. Fouling Other Tracks

(a) Equipment must not be allowed to move foul of another track unless properly protected.

(b) A movement must not foul a track until the switches connected with the move are properly lined, or in the case of semi-automatic or spring switches, the conflicting route is known to be clear.

....

On the day in question, the grievor was working with a conductor and a brakeman. When moving a set of cars to be placed on a designated track, the crew ran through a switch that was reversed against their locomotive. The grievor had reversed his movement on instruction from his conductor who indicated "back to clear H track". The grievor said that he assumed the point of movement was being protected when the conductor had given this instruction.

The reason the switch was lined against the train operated by the grievor and his crew was that there was another crew, a road freight crew, working at the same end of the yard as the grievor's crew. There was a lack of communication regarding that 2nd crew and its movements and in the result the switch was not lined for the movement of the grievor's crew.

The Company says that the grievor should have confirmed the position of the switch or confirmed that the conductor was in a position to protect the point of movement. The other two members of the crew, the conductor and the trainman, received thirty day suspensions for the incident; the grievor was discharged. The Company says that the reason relied on for the disparity in discipline was the grievor's disciplinary record. That record consists of a seven day suspension for a run through switch incident on June 5, 2014; six months prior to this incident. The Company also

relies upon the discipline of the grievor some thirteen years earlier for a run through switch violation and earlier ones than that occurring in the 1990's. The grievor's record stood at zero demerits at the time of this incident.

The Union responds that the seven day suspension assessed against the grievor for the June 2014 incident is being grieved and that the grievor's violation in that matter should properly have resulted in ten demerit points under the "Admission of Responsibility" provision in the collective agreement which permits an employee to waive the right to a formal investigation where discipline of ten demerits or less is assessed.

From 2001 to 2013, other than an unrelated late reporting incident, for which the grievor was given an informal notation, the grievor has had no discipline up until the June 2014 event. I am not prepared to consider this much earlier discipline when the grievor has demonstrated that for a period of thirteen years he has not had moving violations of any kind.

When the instant incident occurred then, the Company could rely on the June 2014 incident. Even if the Company were correct and the grievor properly stood with a seven day suspension on his record for that incident, the penalty of discharge cannot stand. In addition, the Company has not satisfactorily explained why the conductor, who gave the instruction to the grievor, was disciplined more lightly than the grievor.

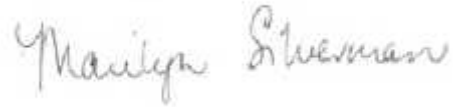
Given the obligation of all crew members to communicate, the grievor's role in the incident, the June 2014 run through switch infraction and the disparity of discipline, (see **CROA&DR 905 and 3581** regarding unexplained differential treatment), I find that ten demerit points is appropriate discipline.

I turn then to the further events immediately following the discharge relied upon by the Company. These events were not included in the Company's ex parte statement of issue. The Company relies on an altercation between the grievor and his manager, Assistant Superintendent Woodhouse, when he was giving the grievor the termination document. Different versions of events were advanced, including the grievor elbowing his manager and the manager "trapping" the grievor against a railing. The situation escalated because Mr. Woodhouse insisted that the grievor sign the termination document; which signature was not required in any event. The Union also provides information of an earlier altercation between these two men in November 2010, for which Mr. Woodhouse later issued an apology.

Having heard the two versions of events, even if physical contact was made and the grievor's elbow hit the manager, it was likely more the result of the physical proximity of the two men rather than a deliberate act. On these facts I am not persuaded that the post termination incident should have any bearing on the outcome of this matter. Nor has that altercation irreparably damaged the relationship between the Company and an employee of twenty service who has never before been involved in an incident of this kind.

Accordingly the grievance is allowed in part. The grievor is to be reinstated to employment forthwith with compensation for all wages and benefits lost and without loss of seniority. His record is to reflect ten demerits for his involvement in the run through switch incident.

December 4, 2015



MARILYN SILVERMAN
ARBITRATOR