

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4424**

Heard in Calgary, November 11, 2015

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE  
CONDUCTORS, TRAINPERSONS, YARDBERSONS**

**DISPUTE:**

The discharge of Yard Conductor Sherilyn Nontell (168548) for “failing to put the keep back in the switch resulting in derailment of 2 cars AMCX 4434 & ELTX 7223 at Saskatoon while working as foreman on the 1455 yard assignment December 11, 2014”.

**JOINT STATEMENT OF ISSUE:**

The Grievor, Sherilyn Nontell, was working as Yard Conductor on the 1455 yard assignment in Saskatoon yard on 11 December 2014. While in the process of switching cars the Grievor found track SC22 switch difficult to line for track SC22 but could line the same switch for the lead without difficulty. The Grievor required the assistance of a member of the car department to line the switch for SC22 on the next cut of cars for SC22 and on the third move into SC22 could not line the switch at all. The Grievor received permission to hold out the cars destined for SC22 to SC24. As the Grievor was in the process of setting cars out to SC24, the two lead cars derailed at the SC22 switch.

On 12 December 2014, the Grievor was issued a notice to appear for an investigation with respect to this matter. On 17 December 2014, the Grievor attended a formal Company investigation. On 30 December 2014 the Grievor received a Forum 780 assessing her record with a discharge.

The Union's position is that the discipline assessed is unwarranted and in any case excessive.

**FOR THE UNION:**  
**(SGD.) R. Donegan**  
**General Chairperson**

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

There appeared on behalf of the Company:

D. Brodie

– Manager, Labour Relations, Edmonton

K. Morris – Senior Manager Labour Relations, Edmonton  
T. Brown – General Manager, OPS, Edmonton

There appeared on behalf of the Union:

K. Stuebing – Counsel, Caley Wray, Toronto  
R. Donegan – General Chairman, Saskatoon  
R. Thompson – Vice General Chairman, Saskatoon  
S. Nontell – Grievor, Saskatoon

### **AWARD OF THE ARBITRATOR**

The grievor, a yard conductor with eight months of service was discharged from her employment on December 30, 2014 for her failure to place a keeper on a switch. The Company contends that this resulted in the derailment of two cars.

CRO Rule 104(b) provides:

104. Hand Operated Switches  
General  
...

(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.

At the time of her discharge the grievor was a probationary employee as prescribed under Article 108A.10(d) of Agreement 4.3. However, the Company did not dismiss the grievor as unsuitable under the probationary provisions (as it appears it was entitled to do) but rather conducted an investigation and terminated the grievor for the specific CRO Rule violation. Two weeks prior to the hearing the Company raised the

issue that the grievor was a probationary employee, subject to discharge for unsuitability; a position which the Union asserts is prejudicial to it and a fundamental shift in grounds for termination.

The grievor does not dispute that the keeper was not placed on the switch and understands that failure to do so was an error. The Union too agrees that the failure to place the keeper on the switch was an error but contends that it was not necessarily the cause of the subsequent derailment. It relies on the grievor's statements during the investigation that the switch was in the notches. The Company says that its supervisors saw the switch handle up in the air after the derailment and not, as the grievor contends, in the notches. Given that there was a clear breach of an important safety rule, I do not think that this distinction assists the grievor, nor does it suggest some other cause of the derailment.

From the material presented, it is clear that the switch in question was hard to move and that the grievor had difficulty with it prior to the derailment. She reported to her Yardmaster that she was unable to lift the handle of the switch. The difficulty with the switch however, did not prevent her from placing the keeper back on the switch; which action may well have prevented the derailment. Discipline is warranted for the infraction of the failure to place the keeper in the switch in violation of CRO Rule 104(b).

The issue is whether the standard to be used in assessing discipline is the probationary standard of unsuitability or the just cause standard which, based on the

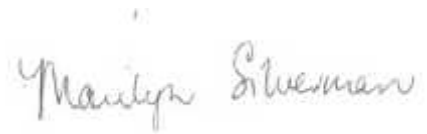
information and material provided by the Union, would likely result in the assessment of demerit points. The Union argues that the Company is bound by the standard it chose. Applying the just standard for this infraction, the Union provided discipline issued to employees in the range of fifteen to twenty-five demerit points for failure to replace a keeper switch.

The Union is supported by the decision of this Office in **CROA&DR 4285**. In that case, the grievor, a probationary employee, failed to observe a signal displaying stop; a Rule 439 violation. In addressing the issue of the standard to be used the arbitrator found it significant that the Company chose to dismiss the grievor on his Rule 439 violation and not as a probationary employee found to be unsuitable. The arbitrator applied the just cause standard and taking into account certain mitigating factors, reinstated the grievor.

Here, the grievor clearly violated an important operating rule, one which can and does have serious consequences. She was a probationary employee. The Union established that, in other cases, the Company has terminated probationary using the standard of unsuitability. Here, however, the Company chose to dismiss the grievor on the basis of her violation of Rule 104. Accordingly, following this Office's approach in **CROA&DR 4285** the Company's disciplinary decision will be assessed on the standard the Company chose to apply. In assessing the appropriate discipline for that infraction, the grievor is a short service employee but has no discipline on record. I find that the infraction should attract a penalty of twenty-five demerits.

The grievance is therefore allowed in part. The Arbitrator directs that the grievor be reinstated to employment without compensation for any wages or benefits lost. Her disciplinary record to reflect twenty-five demerit points for the failure to secure the switch with the keeper.

December 4, 2015

A handwritten signature in cursive script that reads "Marilyn Silverman".

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MARILYN SILVERMAN  
ARBITRATOR