

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

CASE NO. 4454

Heard in Montreal, April 12, 2016

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge assessed to Michael Sarginson for his involvement in a derailment on August 2, 2015.

JOINT STATEMENT OF ISSUE:

While working as a yard operating employee (YOE) on August 2, 2015, Mr. Sarginson was involved in a major derailment at Macmillan Yard.

Mr. Sarginson was required to attend a formal employee statement for his involvement in the derailment.

As a result of the findings of the investigation, Mr. Sarginson was discharged.

It is the Union's position that the discipline assessed was unjustified, unwarranted and excessive given the circumstances. Mr. Sarginson had no prior discipline on his file.

In addition, the Union alleges the Company violated Article 82, 85, 85.5 and Addendum 124 of the 4.16 Collective Agreement.

The Union is also seeking a significant Remedy in accordance with Addendum 123.

The Company disagrees.

FOR THE UNION:
(SGD.) J. Robbins
General Chairman

FOR THE COMPANY:
(SGD.) V. Paquet
Labour Relations Manager

There appeared on behalf of the Company:

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|---------------|--------------------------------------|
| V. Paquet | – Labour Relations Manager, Toronto |
| D. Larouche | – Labour Relations Manager, Montreal |
| S. Dale | – Assistant Superintendent, Toronto |
| C. Michelucci | – Director Labour Relations, Toronto |
| O. Lavoie | – Labour Relations Manager, Montreal |

There appeared on behalf of the Union:

R. Church	– Counsel, Caley Wray, Toronto
J. Robbins	– General Chairman, Sarnia
J. Lennie	– Vice General Chairman, Sarnia
M. Sarginson	– Grievor, Napanee

AWARD OF THE ARBITRATOR

The Grievor was discharged for his involvement in a derailment. At the time of the events giving rise to his discharge, the Grievor had worked for the Company for approximately one year and had a clean disciplinary record.

On August 2, 2014 the Grievor was working as a yard operating employee at the Macmillan Yard Dual Hump. In that capacity he was operating a belt pack and was responsible for gathering cars from a receiving yard and pushing them over the hump at Macmillan Yard in order for them to be sorted on other tracks. He received confirmation to pull his cars toward the east pullback track.

Pullback tracks contain sensors, installed for the purpose of confirming cars are on the intended route. Yard service employees performing this work are supposed to ensure that they receive a pullback protection message in order to confirm that the cars are on the correct route and that the pullback stopping protection is on. That message should come onto the employee's radio automatically but, if no message is received the employee must manually check the status of the message and ensure that the pullback protection is in place. If the pullback protection is not confirmed, the employee is to stop

the movement. The Grievor was to protect the point to confirm the route was clear up to the point where pullback protection begins.

In this case the Grievor was in fact on the wrong line as a result of an error made by the yardmaster, who had lined the movement for the wrong track. The Union asserts that this error by the yardmaster was the reason the derailment occurred and is not the fault of the Grievor. The Company asserts that the yardmaster's error does not relieve the Grievor of his obligation to have ensured that he received the pullback message before proceeding. The Grievor continued to travel approximately 3500 feet beyond where he should have received the automatic pullback message confirming that the pullback stopping protection was activated. He did not manually check for the message confirming pullback protection. The derailment resulted causing significant damage. The Union asserts that the amount of damage should not in itself be part of the consideration to the penalty (see **CROA&DR 690**). As noted in that case the assessment is based on the employee's conduct and compliance.

When asked about the incident at the time, the Grievor explained that he did not hear the automatic pullback protection message nor did he check the status of the message because he did not think of it. At the investigation meeting the Grievor reiterated that he did not notice that he did not get the pullback protection message. He confirmed however that he knew that he had to listen for the pullback message. The Grievor expressed remorse, indicated that this would not happen again and apologized for the incident.

The Company relies on CRO Rule 115 regarding protecting the point and specifically on the following rules found in the Macmillan Yard Operating Manual:

Item 3.21 (e)

e) East Pullback Track

A crew member of movements from the North end of R yard lined to the East Pullback must provide point protection until it can be seen that the route is clear of equipment, up to the point where pullback protection begins.

And

Item, 6.6 (in regards to the Hump LCS)

When providing point protection from the north end of R Yard to the East or West Pullback track, the YOE must provide point protection until it can be seen that the route is clear of equipment up to the point where Pullback Stopping Protection (PSP) begins on the applicable pullback track. Before the movement is allowed to continue northward on the pullback track PSP must be confirmed.

EXCEPTION: West pullback lights located on dual hump bridge provide protection when proper indication is displayed.

The Union advances three arguments as to why no discipline is warranted: a) that the Grievor was not at fault at all since he was on the wrong track as a result of the yardmaster's error; b) the Grievor would not have been able to stop the movement in time even if he had heard the message; and c) the penalty imposed on the Grievor was unfair and discriminatory.

The Company objects to the Union being permitted to rely on the second argument since it was not advanced in either the grievance or the Joint Statement of Issue. The Company asserts that it is prejudiced as it cannot now prepare and

investigate on the issue of whether or not the Grievor would have been able to stop in time had he properly confirmed the pullback protection. In this circumstance, I am not prepared to consider this evidence. It was raised only at the hearing when the Company was not in a position to refute it. It is in any event speculative. Accordingly, in these circumstances I am not prepared to give any weight in this determination to item b) above.

In respect of the third argument, that the penalty is unfair and discriminatory, the Union points out that the yardmaster, although initially discharged, was brought back to work with a reduced penalty by agreement with the Union. In addition another employee was issued ten demerit points when he made the same error as the Grievor did in this case; although in the context of an efficiency test. It is notable that the yardmaster had more seniority than the Grievor, and in the second case relied upon by the Union, the employee did press his control button to stop the movement, although he was disciplined for doing so late.

The Company relies on **CROA&DR 3281** where the grievor was not solely responsible for a side collision and yet this Office concluded that the grievor's contribution to the incident merited discipline:

However, from the standpoint of the grievor, the Arbitrator has difficulty understanding his failure, for a period of something in excess of thirty seconds, to do anything at all when he obviously realized that his locomotive was in motion, without any of the normal precautions, such as having a person on the front point, and without first verifying that the switches ahead were lined for that movement. Even accepting that the grievor was surprised by Mr. Knight's action it is clear that he had the opportunity, well before the collision, to tell Mr. Knight to stop the movement as he did not yet have confirmation of the status of the

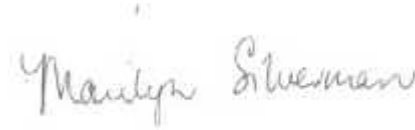
westbound assignment. He could also have stopped the forward momentum of the locomotive by utilizing an emergency stop button on his own belt pack, or alternatively by engaging an emergency braking device in the cab of the locomotive. The grievor's apparent indifference to the situation for the better part of thirty seconds was, I am satisfied, a negligent failure on his part which did, to a degree, contribute to the side collision which occurred. [Emphasis added]

I am not prepared to find that the Grievor was blameless in this incident because of the error of the yardmaster. The Grievor failed in his own independent work obligations. The Grievor made a serious error in not ensuring that he obtained his pullback protection and as such he was at least in some measure responsible for the derailment. The fact that the yardmaster sent the Grievor on the wrong track does not absolve the Grievor of his independent obligation to ensure he had pullback protection. It remained in the Grievor's control to avoid the derailment had he observed the precaution that he was required to take; a requirement that is critical to the safe operation of the train. Accordingly, the Grievor bears responsibility for the error he made. Accordingly, discipline is warranted.

The only issue that remains is whether there is reason to mitigate the penalty of discharge and substitute a lesser penalty. The incident was a serious one and the Grievor is a short service employee. However in that service he has no prior discipline. Neither at the time of the incident nor at the investigation meeting did he try to minimize or deflect what occurred. He was sorry and remorseful. Given these factors and the circumstances of this incident, I am prepared to mitigate the penalty of discharge and reinstate the Grievor to employment.

Accordingly the grievance is allowed in part. The Arbitrator directs that the Grievor be reinstated to his employment. In these circumstances, I make no award of back pay.

May 31, 2016

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

**MARILYN SILVERMAN
ARBITRATOR**