

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

CASE NO. 4455

Heard in Montreal, April 12, 2016

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The assessment of twenty demerits to Conductor J. Noren of Edmonton, Alberta, for failure to comply with CROR 105, CROR 113, and CROR 115, resulting in the derailment of one car in B255 while working the 07:00 Bissell assignment on March 8, 2015.

JOINT STATEMENT OF ISSUE:

On March 8, 2015, the grievor was called as the Foreman on the YPDS-02 belt pack yard assignment at Walker Yard.

During this assignment while servicing Quadra Chemicals, the grievor was in control of the movement and lifting four cars out of track B256. The tail end car was shoved into the stop block, derailing the trailing set of wheels.

The grievor provided an employee statement with respect to the March 8, 2015 incident, and was subsequently assessed twenty demerits.

The Union writes that there is no evidence that any Rule violation was observed by a Company Officer or other employee. The Union contends that the Company has provided no proof of any Rule Violation, relying instead on circumstantial evidence and the speculation that the grievor must have been responsible.

The Company disagrees with the Union's contentions.

FOR THE UNION:
(SGD.) R. Donegan
General Chairman

FOR THE COMPANY:
(SGD.) P. Payne for C. Michelucci
Director, Labour Relations

There appeared on behalf of the Company:

P. Payne	– Manager Labour Relations, Edmonton
K. Morris	– Senior Manager Labour Relations, Edmonton
T. Brown	– General Manager Western Operations, Edmonton
M. Nystrom	– Transportation Supervisor, Edmonton
C. Michelucci	– Director Labour Relations, Toronto

And on behalf of the Union:

- R. Church – Counsel, Caley Wray, Toronto
- R. S. Donegan – General Chairperson, Saskatoon
- R. S. Thompson – Vice General Chairperson, Saskatoon

AWARD OF THE ARBITRATOR

The Grievor, a conductor with one year and six months of service at the time of this discipline, was issued twenty demerit points for a derailment.

On March 8, 2015 the Grievor was working on belt pack assignment at Walker Yard moving tank cars ready for unloading. The Grievor coupled a cut of cars, bunched them and shoved them off the end of the track. A set of trailing wheels on one of the cars derailed. When the Grievor was asked about the incident at the time it occurred he indicated that he did not think he was responsible for the fact that the far car fell off the rail. At the investigation meeting, the Grievor further explained the particulars he relied upon for that position. The helper working with the Grievor also provided a statement, and from where he was positioned, he could not see what caused the derailment. The Trainmaster and Assistant Superintendent attended at the spot where the cars derailed. As part of their investigation, they questioned the employee of Quadra Chemicals whose trucks were being serviced at the time, who indicated that when he looked at the rail cars that morning he did not see any problems with the cars or the track.

Portions of the relevant Rules are:

105. Operation on Non-Main Track

Special instructions will indicate when this rule is not applicable on a specific track.

Unless otherwise provided by signal indication, a movement using non-main track must operate at REDUCED speed and be prepared to stop short of the end of track or the red signal prescribed by Rule 40.1.

113. Coupling to Equipment

...

- (d) When coupling to equipment for any purpose except when humping or flat switching where cars are intentionally let run free, the coupling must be stretched to ensure it is secure.

...

115. Shoving Equipment

- (a) When equipment is shoved by an engine or is headed by an unmanned remotely controlled engine, a crew member must be on the leading piece of equipment or on the ground, in a position to observe the track to be used and to give signals or instructions necessary to control the move.

...

The Union asserts that the facts do not conclusively establish the Grievor's culpability for the derailment. The Company's investigation showed there was no discrepancy with either the track or the cars as could have led to the derailment. The records of the download of the Grievor's lead locomotive on the assignment showed that the Grievor placed the beltpack command and that the locomotive travelled a distance of 13 feet before it stopped. Accordingly, in consideration of the information from the Quadra employee, the fact that the Grievor was in charge of the movement and the download document of the assignment, it was concluded that the Grievor was at fault for the derailment.

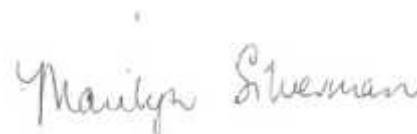
Having considered the documentary information and evidence, the fact that the Grievor was in charge of the movement and the only crew who moved the cars in the relevant time frame, I find that he did not adhere to the actions and/or observations required under the CRO Rules. The reasonable conclusion is that those failures resulted in the derailment.

In his short tenure with the Company the Grievor has amassed an unenviable disciplinary record. He was hired on September 16, 2013. In March 2014 he received a written reprimand for a crossover switch infraction. In August 2014 the Company issued fifteen demerit points against the Grievor for a run through switch violation involving failure to comply with CRO Rule 104 and CRO Rule 115. In September 2014 the Grievor was assessed ten demerit points for riding a tank car improperly. In sum, as of the date of this discipline, the Grievor had twenty-five demerit points and two written reprimands.

In addition to its contention that the derailment was not the fault of the Grievor, the Union submits in the alternative, that twenty demerit points is excessive for this violation. It relies on **CROA&DR 193, 2990, 3237 and 4419** and asserts that fifteen demerits is appropriate for failing to protect the point of movement; a CRO Rule 115 violation. However, given the twenty demerits is within the range of reasonable responses, and the fact that the Grievor had to this incident accumulated demerits for CRO Rule violations (including a CRO Rule 115 violation some six months prior to this incident) I am not prepared to mitigate the penalty assessed.

Accordingly this grievance is dismissed.

May 24, 2016



**MARILYN SILVERMAN
ARBITRATOR**