

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

CASE NO. 4456

Heard in Montreal, April 12, 2016

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The assessment of a three day suspension to Conductor J. Noren of Edmonton, Alberta, for failure to comply with Operating Bulletin #159 GOI 8.12.5 Entraining and Detraining while working the 23.55 Clover Bar assignment on May 16, 2015.

JOINT STATEMENT OF ISSUE:

On May 15, 2015, the grievor was called as the Foreman on the YCBS62 belt pack yard assignment at Clover Bar.

During this assignment the grievor was observed by a Trainmaster as detraining from his movement which was travelling at approximately seven miles per hour.

The grievor provided an employee statement with respect to the May 16, 2015 incident, and was subsequently assessed a three day suspension.

The Union writes that the discipline assessed is unreasonable in all circumstances. The Union contends that the Trainmaster was putting the crew under a considerable amount of pressure to hurriedly perform the work. The Union further contends a violation of Addendum 85 of Agreement 4.3, Management performing Bargaining Unit Work, and a violation of Article 152 of Agreement 4.3, Workplace Environment, demanding that a Remedy be put in place.

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

On May 15, 2015 the Grievor was working as a foreman on a belt pack assignment at Cloverbar. He was observed by Trainmaster Nystrom detrain from the movement. The Trainmaster estimated that the train was travelling at about 7mph; the Union suggests that it was slower than that of about 4mph. As a result the grievor was issued a three day suspension.

General Operating Instruction (GOI) Section 8, 12.5 addresses entraining and detrain. It provides that an employee could not entrain or detrain from moving equipment over a speed of 4 miles per hour (walking speed). In response to safety concerns, this was changed on November 1, 2014 when the General Manager of the Alberta Division issued Operating Bulletin No. 159 which prohibited entraining or detrain at any speed. It reads as follows in relevant parts:

Subject: General Operating Instruction Section 8 Safe Work Procedures-
Item 12.5 Entraining and Detraining: Moving Equipment – Kicking Car
Exception

Effective Immediately

In the application of GOI Section 8 – Safe Work Procedures – Item 12.5 governing entraining and detrain from moving equipment, on the Alberta Sub-Region, including Edson Yard and on the Blackfoot sub from Vermillion up to Marshall employees are not permitted to entrain and detrain from moving equipment except in case of emergency.

Exception: in the process of kicking cars entraining and detrain from moving equipment is permissible at no more than 4mph.

When questioned at the time of the incident by the trainmaster why he had detrained without coming to a complete stop, the Grievor said he was in a rush to get the job done. The Grievor said he was under pressure to get the job he was working on done, he was being called frequently about the pace of the work and when he detrained it was because he saw the Trainmaster coming towards him in a truck at a higher than posted speed. In the investigation meeting the Grievor acknowledged that while he did detrain incorrectly, he said he felt there was a “critical or emergency situation that would have required me talking to the trainmaster as he seemed to rush out to our work area and be standing beside the train”.

The Grievor breached a clear safety directive. I am not persuaded that either on a subjective or objective basis, that seeing the Trainmaster driving out to the work area and standing beside the train to talk to the crew in the circumstances described could reasonably be construed as an emergency or critical situation. As suggested by the Company, the Grievor could have communicated with the Trainmaster by radio if he felt the Trainmaster needed to speak to him about something important. It appears rather that the Grievor’s explanation was an attempt after the fact, to fit his situation into the exception found in Operating Bulletin No. 159.

In his short tenure with the Company the Grievor has accumulated a significant disciplinary record. He was hired on September 16, 2013 and as of the date of this incident had one year and seven months of service with the Company. In March 2014 he received a written reprimand for a crossover switch infraction. In August 2014 he was issued fifteen demerit points 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 **CROA&DR 4455** this Office upheld the issuance of twenty demerits for CRO Rule violations resulting in a derailment. Therefore, as of the date of this assessment of discipline the Grievor's record stood at forty-five demerit points and two written reprimands.

This incident arose out of a violation of a rule that addressed a significant safety concern that the Company had made clear to its employees. It occurred in the context of a Company directive issued some six months earlier that clearly stated that employees were not to get on or off moving equipment other than in the case of an emergency. The Grievor had no credible explanation for his failure to adhere to the directive. Given those facts, the Grievor's short service and disciplinary record, I am not prepared to reduce the three day suspension assessed by the Company.

Accordingly this grievance is dismissed.

May 24, 2016



MARILYN SILVERMAN
ARBITRATOR