

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

CASE NO. 4457

Heard in Montreal, April 12, 2016

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The assessment of twenty-five demerits to Conductor J. Noren of Edmonton, Alberta, for failing to properly secure cars as per CROR 112, performing a proper push/pull test and shoving cars with handbrakes applied resulting in the collision of cars PROX 35426 and PROX 74501 while working the 0130 Xtra yard on September 7, 2015, and subsequent dismissal for accumulation of demerits in excess of sixty.

JOINT STATEMENT OF ISSUE:

On September 7, 2015, the grievor was called as the Foreman on the Y1XS01 yard assignment at Walker Yard.

During this assignment, while the grievor was in control of the movement, the grievor placed 46 cars into track CF55. After cutting off the cars, the cars rolled eastward into the side of the 07:55 Hump Yard assignments, damaging two cars. The grievor violated CROA 112, 106 and GOI 9.1.2 (f) and (g).

The grievor provided an employee statement with respect to the September 7, 2015 incident, and was subsequently assessed twenty-five demerits, which discharged the grievor for accumulation of demerits in excess of sixty.

The Union writes that the grievor did make an error, however mitigating circumstances that led to the incident are that the crew did not stop for lunch or any breaks, and that with half-hour left in their shift they were told to "clear the lead". The Union contends that it would appear that the crew was hurried and that, in part, led to the sideswipe. The Union submits that the twenty-five demerits are excessive and should be expunged, or in the alternative, reduced to a much lesser degree, and the grievor brought back to work, forthwith, and be made whole.

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 was issued twenty-five demerit points and discharged for accumulation for failure to properly secure cars (CRO Rule 112), failure to perform a proper push/pull test and shoving cars with handbrakes.

On Sept 7, 2015 the Grievor was working as a foreman on belt pack assignment at Walker Yard. He and a helper were shoving forty-six cars into a track and coupling with three cars already in that track. The Grievor had omitted to release the handbrakes on the three cars. The Company relies on GOI Section 9 – handbrakes, 9.12 – application of handbrakes which reads in the relevant portion:

9.1.2

f) ... handbrakes must not be applied while equipment is being pulled or pushed. Except as required when testing the effectiveness of the handbrake, equipment is not to be moved with handbrakes applied ...

This was a rule violation for which the Grievor was disciplined but it did not result in the sideswipe. What did result in the sideswipe was that the Grievor then inadvertently put the beltpack control into 4 mph rather than couple speed resulting in

the cars running foul of the lead, which in turn, resulted in the collision. The Company relies on CRO Rule 112 in part as follows:

112. Securing Equipment

a) When equipment is left at any point a sufficient number of hand brakes must be applied to prevent it from moving. Special instructions will indicate the minimum hand brake requirements for all locations where equipment is left. If equipment is left on a siding, it must be coupled to other equipment if any on such track unless it is necessary to provide separation at a public crossing at grade or elsewhere.

b) Before relying on the retarding force of the hand brake(s), whether leaving equipment or riding equipment to rest, the effectiveness of the hand brake(s) must be tested by fully applying the hand brake(s) and moving the cut of cars slightly to ensure sufficient retarding force is present to prevent the equipment from moving. When leaving a cut of cars secured, and after completion of this test, the cut should be observed while pulling away to ensure slack action has settled and that the cars remain in place.

The Grievor and the helper were each assessed twenty-five demerit points. The Company asserts that the actions of the crew created a dangerous situation, particularly as the cars held dangerous goods. The damages sustained were approximately \$15,000.

The Union does not dispute that an error was made but asserts that the penalty of discharge is too harsh. The Union says that the crew was working hard to complete the assignment and did not stop for lunch or break. The Union relies on Awards of this Office ranging from fifteen to twenty demerits for Rule 112 violations (**CROA&DR 1312, 4341, 2989 and 3938**). In **CROA&DR 4065** this Office substituted a suspension for demerits assessed which had resulted in discharge for accumulation.

The Union emphasizes that the Grievor was honest and forthcoming about what had occurred, and took immediate responsibility.

The Grievor does not have a clean disciplinary record upon which to rely for mitigation of penalty. He was hired on September 16, 2013; two years prior to this incident. 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 demerit points against the grievor and in **CROA&DR 4456** this Office also upheld the issuance of a three day suspension. At the time of his discharge for accumulation the grievor's record stood at two written warnings, forty-five demerit points, and a three day suspension. When the Company issued the twenty-five demerit points for the infraction described above the grievor was discharged for accumulation of demerits.

I am not persuaded that there is sufficient reason to reduce the demerit points assessed and to mitigate the penalty of discharge. I refer to **CROA&DR 3884** in which this Office noted that:

It goes without saying that an employee of extremely limited service with an obviously negative disciplinary record cannot advance his or her working history as a mitigating factor in a case such as this....

The Grievor's disciplinary record discloses different CRO Rule violations over his short service. The Grievor has not completed more than a six month period without the imposition of discipline; and in some cases the period between the imposition of disciplinary penalties is much less. Progressive discipline has not had the desired effect

on his conduct and the Company is in a position where it can no longer have confidence in this Grievor's ability to operate safely and effectively in this workplace.

As noted by this Office in **CROA&DR 3824**:

Notwithstanding the application of progressive discipline by the Company, including the assessment of a suspension for the penultimate incident involving Mr. Gelowitz in January of 2007 to avoid his discharge by the assessment of demerits, the grievor's recurring inattention to carefully observing operating rules resulted in yet another derailment.

Having regard to the disposition of this incident, the Grievor's short service, and his disciplinary record, I am not prepared to mitigate the penalty of discharge.

Accordingly, this grievance is dismissed.

May 24, 2016



**MARILYN SILVERMAN
ARBITRATOR**