

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4467-ABCDEFG

Heard in Calgary, June 14, September 6 and December 21, 2016

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

- A.** Appeal on behalf of Locomotive Engineer David Haraldson of the assessment of discipline of 15 demerits assessed effective December 4, 2014 for “failure to comply with CROR 14L, CROR 33, Form 8960 2.4, Form 8960 G3.3 while acting as the Locomotive Engineer on M34041 03 on December 4, 2014”.
- B.** Appeal on behalf of Locomotive Engineer David Haraldson of the assessment of discipline of 30 demerits assessed effective December 5, 2014 for failure to follow the directions of a Company Officer causing delay to Q19991 03 on December 5, 2014 while acting as a Locomotive Engineer.
- C.** Appeal on behalf of Locomotive Engineer David Haraldson of the assessment of discipline of 15 demerits effective December 12, 2014 for “failure to comply with PRB 1007/15 dated February 01, at the east power derail on FT22 Fort Frances yard on February 12, 2015 while acting as the Locomotive Engineer on M34241 12”.
- D.** Appeal on behalf of Locomotive Engineer D. Haraldson of the assessment of discipline of a 30 day suspension for your refusal to follow the direction of Chief RTC while acting as the Locomotive Engineer on U73851-12 on February 16, 2015.
- E.** Appeal on behalf of Locomotive Engineer David Haraldson of the assessment of discipline of 20 demerits assessed effective February 16, 2015 for “Your refusal to accept your NTA from Trainmaster Dales on February 16, 2015”.
- F.** Appeal on behalf of Locomotive Engineer David Haraldson of the assessment of discipline of 20 demerits for “Failure to appear for statement scheduled March 20, 2015 in connection with failure to comply with PRB 1007/15 dated February 1, 2015 at the east end power derail on FT22 Fort Frances yard on February 12, 2015 while acting as Locomotive Engineer on M34241 12”.

G. Grievance progressed on behalf of Mr. David Haraldson, regarding his discharge from employment as a Locomotive Engineer at Winnipeg, Manitoba, contrary to the provisions contained in Article 86.9 and Addendum No. 122 of Collective Agreement 1.2.

FOR THE UNION:
(SGD.) B. Ermet For B. Willows
General Chairperson

FOR THE COMPANY:
(SGD.) D. Brodie for K. Madigan
VP Human Resources

There appeared on behalf of the Company:

K. Morris – Senior Manager, Labour Relations
J. Boychuk – General Manager

There appeared on behalf of the Union:

R. Church – Counsel, Caley Wray
B. Willows – TCRC, General Chairman
B. Ermet – Senior Vice-General Chairman
D. Haraldson – Grievor
R. Tyndall – Retired Conductor, Resource Person

AWARD OF THE ARBITRATOR

This matter concerns a number of grievances filed by the Union on behalf of Locomotive Engineer D. Haraldson (“the Grievor”). Ultimately, on March 30, 2015 the Grievor was discharged for an accumulation of demerits. Prior to the events giving rise to disputes referred to above and commencing in December 2014, the Grievor had zero demerits on his active disciplinary record. At the time of the Grievor’s discharge, he had 26.5 years of service with the Company.

On the first day of hearing the parties agreed to engage in a mediation-arbitration process pursuant to the *Canada Labour Code*. On September 6, 2016 the parties entered into a comprehensive verbal settlement relating to all matters set out above. The written settlement document was drafted shortly thereafter and communication as to the specifics of the written document ensued between the

Company and the Union thereafter. The parties were unable to come to an agreement that the Grievor was prepared to accept. A further hearing date was convened to hear the Company's motion to have the terms of settlement it says was reached by the parties, implemented.

Based on the submissions of the parties, I hereby order that the following terms of settlement be implemented by the parties forthwith:

Mr. Haraldson is hereby reinstated to his employ with the Company and his discipline record will be amended to reflect the following:

1. The 15 demerit marks assessed December 4, 2014, for "your failure to comply with CROR 14L, CROR 33, CROR 106, FORM 8960 G2.3, FORM 8960 G2.4, FORM 8960 G2.7, FORM 8960 G3.3 while acting as the Locomotive Engineer on M34041-03 on December 4, 2014" will be amended to a Written Reprimand. (CN-TCRC-W-2015-00086 - D-0583-CN-2015-7849)
2. The discipline of thirty demerit marks assessed for "your failure to follow the directions of a Company Officer causing delay to Q19991-03 on December 5, 2014 while acting as Locomotive Engineer" will be amended to reflect the assessment of 10 demerit marks. (CN-TCRC-W-2015-00088 - D-0583-CN-2015-7868)
3. The discipline of 15 demerit marks assessed to Mr. Haraldson effective February 12, 2015, for "Your failure to comply with PRB 1007/15 dated February 1, 2015, at the east end power derail on FT22 in Fort Frances yard on February 12th, 2015, while acting as the Locomotive Engineer on M34241-12" will be expunged. (CN-TCRC-W-2013-00302 - D-0583-CN-2013-6640)
4. The discipline of 20 demerit marks assessed to Mr. Haraldson effective February 16th, 2015, for "Your refusal to accept your NTA from Trainmaster Dales on February 16, 2015" will be expunged. (CN-TCRC-W-2015-00309 - D-0583-CN-2015-8023)

5. The discipline of a 30-day suspension assessed to Mr. Haraldson effective March 20th, 2015, for “Your refusal to follow the directions of Chief RTC while acting as the Locomotive Engineer on U73851-12 on February 16, 2015” will be expunged. (CN-TCRC-W-2015-00309 - D-0583-CN-2015-8023).
6. The discipline of 20 demerit marks assessed to Mr. Haraldson effective March 20th, 2015, for “Failure to appear for Statement scheduled March 20, 2015 in connection with failure to comply with PRB 1007/15 dated Feb 1, 2015 at the east end power derail on FT22 Fort Frances yard on Feb 12, 2015 while acting as Locomotive Engineer on M34241-12” will be expunged. (CN-TCRC-W-2015-00309 - D-0583-CN-2015-8023)
7. Following implementation of all of the above, the Company will provide the Union with a copy of Mr. Haraldson’s revised discipline history.
8. The dispute between the Company and the Union concerning the applicability of Article 86.9 to Mr. Haraldson’s discharge is withdrawn by the Union, effective with their signature on this document. (CN-TCRC-W-2015-00196 - PG-0583-CN-2015-8103)
9. Prior to returning to active duty, Mr. Haraldson must be confirmed fit for duty by Occupational Health Services. Mr. Haraldson must contact Jackie Andersen for this at (905) 761-4942.
10. Prior to returning to active duty, Mr. Haraldson will be required to participate in the Company’s revised CROR Rules re-qualification process, and complete an exam for the purpose of CROR Rules re-qualification. Mr. Haraldson will arrange this with Assistant Superintendent, Mr. Robert Pollon at (807) 274-1923.
11. Effective with Mr. Haraldson’s return to active employment, his seniority date will be fully reinstated without any benefits for the period of time since February 16, 2015. Mr. Haraldson’s record will be amended to reflect a suspension without pay between March 30, and December 31, 2015, inclusive, in place of the original discharge. The Company will pay a lump-sum payment of \$100,000.00, minus applicable deductions, but not subject to mitigation, as full and final settlement of any and all wage or benefits claims for the period of January 1, 2016, through until September 6, 2016. In accordance with the foregoing, Mr. Haraldson must provide a benefits Summary from Service Canada confirming what, if any, Employment Insurance benefits he received, and for what periods of time between January 1, 2016, and September 6, 2016. It is understood that any Employment Insurance benefits that he collected for the period from January 1, 2016, onward, must be withheld from the above lump-sum payment, and repaid to Service Canada by the Company.

The terms of settlement, hereby ordered, do not establish, nor are they to be construed as establishing, a precedent for any other case.

Finally, the suspension referred to in paragraph 11 above, which indicates that the Grievor's disciplinary record "will be amended to reflect a suspension without pay between March 30, and December 31, 2015, inclusive, in place of the original discharge" shall not be used in any future assessment of discipline that may be considered by the Company against the Grievor. Nor can the Company rely on the suspension without pay in any future disciplinary proceeding against the Grievor.

I remain seized with respect to the interpretation and implementation of this award.

December 22, 2016



CHRISTINE SCHMIDT
ARBITRATOR

