

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4480-A**

Heard in Edmonton, July 13, 2016

Concerning

**CANADIAN NATIONAL RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The assessment of 15 demerits to the record of locomotive engineer S. Montani for violation of CROR 112 on February 12, 2015.

**JOINT STATEMENT OF ISSUE:**

On February 11, 2015, locomotive engineer S. Montani was operating train A42231-11 between Port Robinson and Toronto. While en-route, Mr. Montani was required to perform a lift at Aldershot East. In order to accomplish the lift, he was required to cut the train on the mainline and pull clear of the light before backing into Aldershot Yard. While performing this maneuver, the train crew was observed by two CN supervisors cutting off from their train on track no.1 without having secured the portion of the train being left on the main line. As a result of the incident, Mr. Montani was required to attend a formal employee investigation. As a result of that investigation he was assessed 15 demerit points.

The Union contends that there are mitigating factors in the present case. There have been several revisions to the hand brake requirements related to switching en-route. Locomotive engineer Montani was confused with the new requirements and since has a full understanding of the rule as a result of receiving coaching on the subject from the Company.

The Union seeks the removal of the discipline assessed and replaced by a coaching letter, or in the alternative as the arbitrator deems appropriate in the circumstances.

The Company agrees that some revisions have been made to CROR 112 since the Lac Megantic tragedy. However, it is the grievor's responsibility to be kept informed, to update his railway documentation and to properly understand the regulation. In the absence of such understanding, steps must be taken to clarify the regulation. From the facts gathered during the investigation, the grievor did not take any steps to obtain clarifications.

The Company maintains that the assessment of 15 demerit points is not excessive and in conformity with arbitral jurisprudence.

The parties agree that the dispute is properly before the arbitrator.

**FOR THE UNION:**  
**(SGD.) R. Caldwell**  
General Chairman

**FOR THE COMPANY:**  
**(SGD.) O. Lavoie**  
Manager Labour Relations

There appeared on behalf of the Company:

- |           |                                      |
|-----------|--------------------------------------|
| O. Lavoie | – Labour Relations Manager, Montreal |
| A. Daigle | – Labour Relations Manager, Montreal |
| B. Barber | – Senior Manager Engine Services     |
| G. Hare   | – Superintendent, Northern Ontario   |

There appeared on behalf of the Union:

- |             |                                     |
|-------------|-------------------------------------|
| M. Church   | – Counsel, Caley Wray, Toronto      |
| R. Caldwell | – General Chairman, Bancroft        |
| P. Boucher  | – Vice General Chairman, Belleville |
| S. Montani  | – Grievor, Port Robinson            |

### **AWARD OF THE ARBITRATOR**

This arbitration concerns the assessment of fifteen demerits to Locomotive Engineer Scott Montani for failure to secure equipment, which is a violation of CROR 112, on February 12, 2015.

At the time of the incident, the Grievor had been working for CN Rail for the past twenty-seven years, twenty-four of which were as a qualified locomotive engineer. On the day of the incident, the Grievor had thirty active demerits. During the course of his career, Mr. Montani accumulated a total of 220 demerit points, was investigated nineteen times, received three written reprimands, was suspended once, got one restriction and was also discharged at one point prior to the incident. Except for the year 2011, he was disciplined every year for the past six years.

On February 11, 2015, the Grievor was operating train A42231-11 from Port Robinson to Toronto. En route, they had to pick up cars at Aldershot Yard, where the crew's manoeuvres were observed by two CN officers conducting a safety audit. When the crew cut away from their train, they failed to secure the cars they left on the main

line. When asked via radio by the two observing officer how their train was secured, they answered that it wasn't.

After securing the train, the officers had a discussion with the crewmen to inquire about the incident. The Grievor and his co-worker acknowledged that they left the cars unattended and that they should have secured it.

After a formal employee statement on February 16, the Grievor was assessed fifteen demerits. The investigation conducted revealed Mr. Montani was not familiar with GLD Bulletin 14117 – new Securement Rules that came out in October 31, 2014, about 100 days before the incident.

GLD Bulletin 14117 states:

“Rule 112 – Securement

(a) Leaving Equipment Unattended – (without locomotive attached)

Unattended equipment must be secured. The following are acceptable methods of securement: [...]

2. On main track, slidings or high risk locations

(i) sufficient number of handbrakes according to chart, and

(i) must be left with air brakes applied, and

(iii) The brake pipe is fully vented at a service rate or an emergency application of the air brakes has been made and the angle cock is left full open, and

(iiii) At least one (1) additional physical securement measure or mechanism to be applied.

3. Switching En-route

[...]

(ii) On main track sidings or high risk locations while switching, picking up or setting off en route, the standing portion left unattended must be secured as follows:

- Less than 2 hours: secured as per paragraphs (a) 2, items (i) to (iii).

- Every 2 hours thereafter: a qualified employee must conduct a visual verification to confirm that the cars have not moved, the hand brakes chains are tight, and the airbrake pistons are fully extended. This verification must be carried out at 2 hours intervals. If any movement is detected, additional hand brakes must be applied.”

While the facts are not disputed by either party, the Union contends that there are mitigating factors at play, namely that the handbrakes requirements were changed numerous times since the 2013 Lac Megantic disaster, and that the Grievor now understands them after receiving coaching from the Company, after February 11, 2015.

Fortunately, no damage was inflicted due to the Grievor's mistake. However, that does not take away the fact that securing equipment left unattended is an important rule for the railway industry.

In **CROA&DR 4341**, Arbitrator Schmidt reduced the grievor's penalty to twenty demerits from the initial forty. The Grievor's failing to secure cars while switching resulted in a side collision and derailment in the Kamloops yard. His disciplinary record showed ten demerits at the time of the incident and received thirty more in August 2011. He had been with the company for twenty-five years. The arbitrator's decision was mainly based on the disparity of responsibility between the grievor and his co-worker.

In **CROA&DR 4384**, the grievor, which had been with the Company for thirty years, had failed to test the effectiveness of the hand brake while switching cars in the yard, resulting in a contact between two cars. The termination was replaced by a seven day suspension. The grievor stood at fifteen active demerits and served a suspension after being reinstated following a discharge the year before. The somewhat light discipline record of the grievor and the length of his career led the arbitrator to conclude

that “The discharge of a thirty-year employee in these circumstances was not warranted”.

The case at bar differs from the two previously cited decisions. Here, the Grievor’s discipline record is less than desirable and shows a number of instances where safety rules were violated. At the same time, the present case involved no consequences at all compared to a collision and derailment or contact between cars.

It must also be pointed out that the Grievor’s extended time with the Company is in his favor and that no damages were inflicted because of the crew’s mistake, further mitigating the gravity of the Grievor’s actions, which were due to its misunderstanding of CRO Rule 112. It is also true that while the Grievor has an obligation to know the rules, the Company should give proper and sufficient training and coaching to its employees, in view of the humongous number of rules in the railway industry. By changing its rules frequently, the Company exposes itself to more mistakes from its employees, especially if no coaching or instruction is provided. It is the Company’s responsibility to make sure that its rules are known and understood by its employees, especially for rules that can incur discipline.

In the revised Transport Canada Recommendations report published after the Lac Megantic incident, the organization made the following comments regarding rule changing:

“For equipment securement, reliance is placed on Canadian Rail Operating Rule (CROR) 112, company special instructions and training. However, TSB investigations into runaways revealed that the sequence of events

very often included the misapplication of a rule, such as improper hand brake effectiveness test or the application of an insufficient number of hand brakes. This means no matter how well the rule is worded, it will not always be strictly complied with, introducing vulnerability into the system.

Rules are administrative defences, and, invariably, there will be instances where practices in the field will deviate from written rules and procedures. Even with clear and comprehensive rules, it has been demonstrated over the years that depending solely on the correct application of rules is not sufficient to main safety in a complex transportation system [...]"

While this passage doesn't entirely justify the Grievor's violation and does not excuse his actions, it does highlight the Company's responsibility when it comes to training and communications of the rules to ensure proper application from its employees.

However, the presence of mitigating factors does not nullify the Grievor's misconduct and does not fully account for the aggravating factors.

Thus, for the abovementioned reasons, the grievance is allowed in part. The discipline of fifteen demerits shall be reduced to tendemerits in order to compensate for the Employer's lack of coaching and training regarding the numerous changes that were made to CROR 112.

September 27, 2016



---

MAUREEN FLYNN  
ARBITRATOR