

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

Heard in Edmonton, July 13, 2016

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The assessment of 10 demerits to the record of S. Montani for alleged train handling violations surrounding two broken knuckles incurred while operating train A42231-20 while employed as a locomotive engineer on train M3164123 on April 23, 2015.

JOINT STATEMENT OF ISSUE:

On July 30, 2015, Mr. Montani was the locomotive engineer working on train A42231-30 while en-route, a train separation occurred at two locations in the train.

Mr. Montani attended a formal employee investigation on August 6, 2015 for alleged train handling violations surrounding two broken knuckles incurred while operating the train. He was assessed 10 demerit points.

The Union contends that the Company did not meet the burden of proof that Mr. Montani's train handling was the direct cause of the train separation and as such, the discipline assessed should be null and void and that he be made whole.

In the alternative, the Union submits that there are mitigating factors and as such, seeks the substitution of a different penalty as the arbitrator sees fit under the circumstances.

The Company contends that the grievor did not comply with form 8960-G3.7 and as such was the cause of the train separation. The Company maintains that the discipline assessed was warranted.

The parties agree that the matter 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:

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| 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:

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| 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

The present case concerns the assessment of ten demerits to locomotive engineer Scott Montani for violating Item G3.7 of the train handling policy, resulting in two broken train knuckles.

At the time of the incident, the Grievor had been working for the Company 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 forty-five active demerits, fifteen of which were contested. 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 and had been assessed demerits as recently as February of the same year.

On July 30, 2015, the Grievor was working on train A42231-30 (10,576 feet-long and 8,445 tons heavy) as locomotive engineer from Port Robinson to Toronto. While Mr. Montani was en route, two train separations occurred.

Upon review of the investigation, the Company established that the cause of train separation was the Grievor's violation of Item G3.7 of the train handling policy. After providing his formal employee statement, Mr. Montani was assessed ten demerits.

Item G3.7 states that:

“Running release:

A running release is defined as a release of the automatic brake while a train is in motion.

Before the throttle is advanced, or dynamic brake retarding force reduced following any release of the automatic brake, use the IDU to determine if brakes have released at the rear of the train.

Allow an additional 30 seconds after the pressure starts to rise before advancing the throttle or decreasing dynamic brake retarding force.

A running release may only be made when train speed is:

- 15 MPH or greater when trains are 6500 to 9000 feet in length.
- 20 MPH or greater when trains are over 9000 feet in length.

If necessary, trains subject to the above restriction must be stopped before releasing the brakes.”

The Grievor was going at a speed of 12 MPH when he performed the running release of the automatic brake on the 10 576 feet long train, which should have been going at a speed not lower than 20 MPH. He also reduced the dynamic retarding force less than the prescribed thirty seconds after initiating automatic brake release. This violation of Item 3.7 resulted in two trains separations.

During the investigation, Mr. Montani stated that he did not understand the requirements of Item 3.7. However, two years prior to the incident, on October 8, 2013, while he was investigated for another train handling issue, the Grievor claimed that he

knew and understood the requirements of Item 3.7. In fact, he asserted that he violated Item 3.6 in order to avoid a violation of Item 3.7.

Earlier that year, in August 2013, during another investigation for train handling issues, Mr. Montani had claimed that he understood Item 3.7. He was disciplined for the incident and received coaching on Item 3.7.

Contrary to the Union's position, I cannot conclude that the Grievor's claims of misunderstanding can excuse his mistakes. As shown in the previous paragraphs, these claims are clouded by the Grievor's contradictions and thus does not strike as a particularly strong justification for a fourth train handling violation since 2013. These repeated failures should have compelled the Grievor to make sure he understood the various train handling rules, including the content of Item 3.7.

In **CROA&DR 3839**, the grievor, also a locomotive engineer, was assessed twenty demerits resulting in his discharge for accumulation because of his "aggressive" train handling, a violation of Locomotive Engineer Operating Manual Form 8960, which caused a train separation, in a very similar fashion to the case at bar.

Referring to the sixteen previous train separations that occurred in the past thirty months in Western Canada, Arbitrator Picher noted, citing counsel for the Union that the usual discipline for a train handling error was in the range of twenty demerits:

"Fully ten of the sixteen train separations involved either train 302 or train 301, which are acknowledged to be extremely long trains. Counsel also stresses that the typical discipline assessed for those train separations was

in the range of twenty demerits. While there is some variance in the measures of discipline assessed, no employee has previously received forty demerits for a train handling error leading to a separation, as occurred with the grievor.”

In **CROA&DR 4416**, Arbitrator Schmidt assessed twenty demerits and ultimately discharged the grievor, a locomotive engineer, for a train handling violation resulting in a derailment caused by a train separation.

Having concluded that the grievor was culpable of the violation, she stated that:

“In my view, the only issue before me is whether it is appropriate for me to disturb the sanction of twenty demerits imposed on the grievor for the violation of Form 8960. The Company urges me to uphold the discipline and argues that the imposition of twenty demerits is entirely reasonable. It directs me to CROA&DR 3839, where the Union argued CROA&DR 4416 that twenty demerits is within the range of typical discipline imposed in similar circumstances to the case at hand. In addition, the Company directs me to the grievor’s discipline record, which it characterizes as abysmal.

It would be challenging for the Union to argue seriously that the penalty imposed was unreasonable; I accept that twenty demerits is an appropriate disciplinary penalty for the misconduct to which the grievor admitted in this case.”

Similar to the case before us, the grievor was a long time employee, but had a less than enviable record. Arbitrator Schmidt, on whether the twenty demerits penalty was appropriate, explained that:

“The grievor’s discipline record, and in particular her record in recent years, reveals a recidivism relating to train handling issues. In December 2011 the grievor was issued fifteen demerits for aggressive train handling, and three months later, in February 2012, twenty further demerits were imposed for train handling violations leading to a broken knuckle. In addition to further demerits and a suspension imposed in 2012 and 2013 relating to attendance issues, in February 2014, the grievor was discharged for exceeding the permissible speed on a train carrying crude oil. By agreement of the parties, the grievor’s discharge was reduced to a five-month suspension. As part of the grievor’s reinstatement to work in July 2014, section G of CN form 8960 was reviewed with her; yet the incident at issue in this case relates to a violation of that very form.

I am cognizant the grievor is a long service employee. She is also remorseful and at no time sought to deflect any responsibility for the incident. Without the necessity of going CROA&DR 4416 into specific details, I acknowledge the grievor's personal and financial difficulties as outlined by the Union's brief.

Beyond the grievor's active discipline record, she has been disciplined twenty-one times during her tenure with the Company, and had 180 lifetime demerits at the time of the incident. Her record is far from exemplary."

At the time of the incident, Mr. Montani also had a poor record and had previously violated train handling requirements. He received coaching on Item 3.7 and still failed to respect it. This would be the Grievor's fourth train handling violation since 2013, he had ample time to adjust and make sure he would not repeat his past mistakes.

In **CROA&DR 3839**, cited by Arbitrator Schmidt and in **CROA&DR 4416**, it is recognized that a violation of train handling procedures generally results in a twenty demerits discipline. Here, the Company chose to assess ten demerits to the Grievor. Given Mr. Montani's past violation and discipline record, the Company's decision is more than reasonable.

For the abovementioned reasons, the grievance is dismissed.

September 27, 2016

A handwritten signature in black ink, appearing to read 'M. Flynn', is centered within a light gray rectangular box. The signature is stylized with a horizontal line extending to the right.

MAUREEN FLYNN
ARBITRATOR