

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

Heard in Edmonton, July 13, 2016

Concerning

**CANADIAN NATIONAL RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The discharge of Locomotive Engineer S. Montani for accumulation of demerits following the issuance of twenty demerits for violation of CN Form 8960 paragraph A1.11 while working as Locomotive Engineer on train A42231-30 on July 30, 2015, resulting in his discharge for accumulation of demerits.

**JOINT STATEMENT OF ISSUE:**

On July 30, 2015, Mr. Montani was the locomotive engineer working on train A42231-30. Mr. Montani was required to lift locomotive CN 1444 at Aldershot and take it to Toronto. After lifting the locomotive, he put it on line with his other locomotives contrary to CN operation policy contained in CN Form 8960 – Paragraph A1.11.

At the time of this incident, Mr. Montani's discipline record was at fifty-five demerits. He was investigated for the incident on November 6, 2015 for the alleged violation of Form 8960 and was assessed twenty demerits. As a result, his demerits were in excess of sixty (total demerits seventy-five) and he was discharged for accumulation of demerits.

The Union asserts that Mr. Montani did not understand the requirements relative to having a locomotive with less than 1800 horse-power when attaching to other locomotives equipped with turbo-charged engines. The Union states that there was no damage to the equipment or any other CN property and as such, the discipline assessed is excessive under the circumstances.

In the alternative, the Union submits that there are mitigating circumstances in this instance. The Union seeks the substitution of a different penalty and the reinstatement of Mr. Montani.

The Company contends that the grievor did not comply with Form 8960 – Paragraph A1.11 and as such the twenty demerits assessed is not excessive or outside the norm under the circumstances. The Company maintains the decision to discharge Mr. Montani for accumulation of demerits in excess of sixty was appropriate and justified in this case.

The parties agree that this matter is properly before the arbitrator.

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

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

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**

The present case concerns the assessment of twenty demerits to locomotive engineer Scott Montani for putting a low power locomotive in line with high power engines, violating CN Form 8960, which caused fires along the Halton Subdivision.

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 fifty-five active demerits, twenty-five 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 before but got reinstated. 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 8445 tons heavy) as locomotive engineer from Port Robinson to Toronto. While Mr. Montani was en route, he had to pick up locomotive CN 1444 in Aldershot and continue to Toronto. Upon lifting CN 1444, the Grievor put this low power locomotive in line with the other turbo charged, high power ones, setting fires along the Halton Subdivision.

CN 1444 is a non-turbocharged, low power locomotive. It is used mainly for service at low speeds off the main line. These locomotives tend to accumulate carbon deposits in their exhaust systems during their usual type of service. Therefore, if these units are used on-line in mainline service in high throttle position for long periods of time, the carbon deposits can ignite and be blasted out of the exhaust stacks. These trailing sparks can cause fires along the right-of-way.

This is what happened on July 30, 2015: fires were reported on the right side of the track at the CN Halton Subdivision after Mr. Montani's train passed. Local firemen were called to extinguish the fires and the closure of the track caused a forty-five minute delay to train 435. After the investigation, it was found that the Grievor had lifted the lower power CN 1444 locomotive and placed it on line.

After providing a formal statement on November 6, 2015, the Grievor was assessed twenty demerits, for a total of seventy-five demerits and resulting in his discharge for having accumulated more than sixty demerits.

CN Form 8960, paragraph A1.11 reads as follow:

“A1.11: Placing a Non-Turbocharged Locomotive On-line  
Non-turbocharged locomotives (1800 HP or less) operating under high throttle positions can pose a serious hazard during fire seasons due to exhausting of carbon build-up sparks.  
Because of this, non-turbocharged locomotives placed in an engine consist for transfer to another location must be shut down or isolated unless permission is granted to work the locomotive (s).

[...]”

The Union contends that Mr. Montani did not understand the requirements related to CN form 8960 and that no damage was inflicted to CN’s equipment or property.

When Mr. Montani was assessed the aforementioned twenty demerits, his record was standing at fifty-five demerits and had previously accumulated more than 200 demerits, a less than enviable performance. This mistake was the third for which the Grievor received discipline since February 12, 2015 and the second of July 30, 2015, and in June 2015, the Grievor also received a written reprimand for going at a speed greater than what was mandated.

The Grievor claims he did not understand CN Form 8930, paragraph A1.11, which has been put in effect for more than ten years. Mr. Montani failed to inquire about that rule, even though he attended three QSOC Recertification’s during that time. He is a trained locomotive engineer and should be able to understand the operating rules.

Trailing sparks, especially during the dry and warm summer months, pose a serious threat to other CN employees, the environment and the general public. Risks of bush fires should not be taken lightly.

I am of the opinion that discipline is clearly warranted. However there remains the question of its nature.

The Grievor was given many chances to be more diligent and correct his past mistakes. He did not seize these opportunities to change his behavior and has continued to display a negligent attitude, resulting in a less than enviable discipline record. In all three incidents, the Grievor claimed he did not know or did not understand the rules he violated, which is worrying in and of itself.

Given the state of this Office's jurisprudence regarding the termination of a long-time employee such as Mr. Montani, his discharge does not seem appropriate in the circumstances. While his discipline record is indeed stained, he has had many periods free of discipline before. Also of importance is the Grievor's medical problems. From February to November 2015, he was suffering from sleep apnea which caused him fatigue, thus probably affecting his work. Because of his condition, he was off work from August to October 2015. This cannot excuse all of his shortcomings, as it is the employee's responsibility to make sure he is apt to work and collaborate with his employer towards that goal.

Overall, Mr. Montani's actions do not warrant discharge, as he has shown in the past a capacity to work in an appropriate and safe manner and has been with the Company for an extended period of time. Nonetheless, his lack of diligence in the previous years and obvious trouble with understanding general and safety rules warrants discipline just short of discharge.

As such, the grievance is allowed in part. I substitute the twenty demerits discipline with the time between his termination and reinstatement being recorded as a suspension for the violation. In addition, the Arbitrator directs that Mr. Montani be reinstated into his employment forthwith, subject to a demotion from the position of Locomotive Engineer. The Company shall be at liberty to assign the grievor to such position as it deems reasonable, for such a period of time as the Company in its discretion considers to be appropriate. The Grievor's record shall stand at fifty demerits. This arrangement must be understood by the Grievor to be his last chance to demonstrate to his employer he can work safely in a manner consistent with the applicable rules of the railway industry.

September 27, 2016



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MAUREEN FLYNN  
ARBITRATOR