

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4489

Heard in Edmonton, September 14, 2016

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The dismissal of Locomotive Engineer Mike Garofalo following his involvement in a derailment while working as Locomotive Engineer on train M373 on July 30, 2015.

JOINT STATEMENT OF ISSUE:

On July 30, 2015, Mr. Garofalo was pulling a cut of cars within Taschereau Yard while accomplishing switching movements required during his tour of duty on train M373. As he was attempting to stop the movement a derailment of six (6) cars occurred.

The Union states that Mr. Garofalo was not made aware of the fact that the rear of the movement he was attempting to stop contained a cut of forty-four (44) loaded cars weighing approximately six thousand (6,000) tons. The Union contends that had the proper information regarding the consist of the movement he was handling been given to Mr. Garofalo that the incident would not have occurred.

With regard to the discharge, the Union contends that there was no just cause for termination and that the penalty is unwarranted and excessive in all of the circumstances. The Union requests that Mr. Garofalo be reinstated without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company does not agree with the Union's position. The Company maintains that it was Mr. Garofalo's responsibility to be aware of the contents of the movement that he was handling. As such, he should not have initiated movement until he had obtained the required information. The Company maintains that the dismissal is reasonable and warranted in all the circumstances.

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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| A. Daigle | – Labour Relations Manager, Montreal |
| O. Lavoie | – Manager Labour Relations Manager, Montreal |
| B. Glass | – Senior Engine Service Officer, Toronto |

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 |
| M. Garafolo | – Grievor, Montreal |

AWARD OF THE ARBITRATOR

On July 30, 2015, the grievor was working as a locomotive engineer. His train was to leave Montreal's Taschereau Yard for Belleville once it was assembled from cars sitting in the east yard on tracks MC97, MC92, and MC95. It was a "hook and haul" job pulling empty rail cars. He worked with Conductor Christian Bica. They picked up two locomotives in the shop and headed to the east yard.

The track set up (DX03) was such that the locomotive the grievor controlled was on a steep downward slope. He would push back into the sidings to pick up the components for the train, and then proceed downhill as he pulled the train forward, creating a natural acceleration. The track was also on a curve, obscuring the view of the sidings where the waiting railcars were located.

The crew's first task was to pull thirty-five empty auto carriers from track MC97. They then had to connect to the cars on track MC92 and pull out twenty-four more empty auto carriers. It turns out that, in addition to the first twenty-four empty cars, track MC92 contained a total of seventy cars, the other forty-six being loaded, to the tune of 6,000 tons. They were connected but the air from the braking system was not. Mr. Bica knew

this, Mr. Garofalo says he did not. The Company replies that if he did not he should have and he erred in pulling forward until he had the facts at hand.

A few basic rail phenomena were at play in this situation. Train couplings are not tight; there is a concertina effect with the gaps between rail cars bunching as the train pushes to the back, and those gaps stretching as the rail cars pull forward, each rippling up or down the train. Loaded cars are far heavier than unloaded cars. Pulling the lighter cars at the front, thus stretching the concertina can stop abruptly when the pull gets applied by the heavier loaded cars at the back. If one knows the condition of the full linked train being pushed or pulled these factors can be compensated for. To a degree, the use of the independent brake on the locomotive, at the front of the train can have a similar effect to an unanticipated heavy load at the rear; it can abruptly alter the state of the concertina along the train and cause what are known as run-ins or jackknifing.

When the Company investigated the cause of this derailment it examined the available data. The locomotive Mr. Garafalo was operating had an event recorder (or "black box") that allowed the analysis, moment by moment, of the speed and direction of the train and just when the various braking systems were applied and released at crucial moments. The Company concluded, from this analysis and its further investigation, that Mr. Garafalo's handling of the train was too rough and his breaking inappropriate. The grievor applied excessive breaking force from both the independent (locomotive only) brake and the automatic brake (which applies air pressure throughout the line of cars if connected), in order to bring the train to a stop. This rough handling, the Company

asserts, unbeknown to the grievor or the conductor, caused a wheel on one of the cars to derail.

To illustrate this rough handling CN used a simulation and compared the data over time from the grievor's data and the replication by another locomotive engineer in a similar locomotive. The submitted documents contain annotations by a Mr. Romain, but they were objected to and reliance upon them withdrawn.

An example of an action available to the engineer when moving downhill is, rather than simply allowing the pull of gravity, to use the independent brake gradually to inhibit the train's speed. He did not do so, instead waiting until the speed reached 8 MPH before intervening.

The results of the simulation when compared to the black box evidence, support the Company's view of rough handling, even though the differences may have been caused in part by the effects of the attached cars.

Mr. Garofalo's description is that, once he got the okay to proceed with the twenty-four additional cars, he just released the brake and let gravity move things forward. Once he saw the train was moving, and the conductor started counting down the cars again he started pulling. He says he heard a panicking voice telling him to stop the train so he put on the automatic brake, keeping his forearm on the brake valve. He then felt the jolt. Panic set in and he did whatever he could to stop the train.

Mr. Garofalo's position is that he was not made aware of the fact that the train he was moving forward from track MC92 included the loaded cars. He says that, had he been given the necessary information, his handling would have been different, the breaking issues including his accidentally releasing the automatic brake, and the derailment would not have occurred. Essentially he is suggesting the moving of the heavy load at the back caused the run in, and increased his speed suddenly on the downward slope, and made it difficult to stop the train.

The grievor says his conductor told him they were pulling twenty-four of the seventy cars on track MC92. The grievor received RTC clearance and transmitted that information to Mr. Bica. While pulling out, the grievor says he felt something like a run-out with the train then stopping suddenly. He was not expecting a sudden stop like that and it caused him to fall forward causing his hand to inadvertently release the automatic brake valve, after which he put his hand back on and applied the automatic brake once again. The grievor's Union Representative asked during the investigation:

Q42 Did you know that there were 44 loaded cars at the north end of MC92 track coupled to the cars you were taking with you?

A42 No, I just learned of that today.

The Company maintains that the crew was in possession of all the relevant information, including knowing of the loaded cars on MC92. It was the grievor's responsibility to inquire and that was one purpose for the mandatory job briefing between crew members at the start of each shift. It relies on Mr. Bica's responses, which I accept,

that they knew they had to do a cut on MC92, severing the loaded cars from the twenty-four being connected to the train. He confirmed that, after coupling onto the cars in MC92, he informed the grievor that they were keeping only twenty-four of the seventy cars, directed him to start pulling ahead, and called out the remaining distance to travel before the cut.

I accept the Employer's point that, if the grievor lacked information about the cars that had to be cut and left behind, he could have inquired of Mr. Bica at the time. While the grievor now says he did not have the necessary information, I find revealing his answers to question 14-16:

14Q. Mr. Garofalo, did you know what you were switching (type of car: weight and length) when making up your train on July 30, 2015?

A. Yes.

15Q. Mr. Garofalo, did the conductor tell you the distances for pulling or shoving to make up your train?

A. Yes.

16Q. Mr. Garofalo, did you ask your conductor for information (length-tonnage) about the cars to be picked up on tracks MC92-MC95 and MC97?

A. I had all that at the start.

This last answer suggests he was working on assumptions without having checked them during a job briefing or confirming them at the time with Mr. Bica. This corresponds to Mr. Bica's answer 16:

16Q. Mr. Bica, did the engineer ask you for information about the cars to be picked up on tracks MC92-MC95 and MC97?

A. No.

What went with Mr. Garofalo not knowing about the loaded cars is that he also had no information on whether the air on these cars was connected and thus whether he had control over their automatic braking system.

What appears clear is that once the train had stopped and Mr. Bica had uncoupled the twenty-four cars from the loaded cars, the train pulled forward to allow Mr. Bica to change the switches so he could direct the train into MC95. At that point, neither Mr. Bica or Mr. Garofalo knew a wheel had gone off the track. Mr. Bica told Mr. Garofalo to back up. As the train pushed up towards MC95, after about five car lengths of movement, the initial wheel derailment caused six cars to jump the tracks and end up on the adjacent asphalt. This, in turn, resulted in the train going into an emergency state.

The Union asserts that it was the conductor's job to tell the engineer, who is upwards of a mile away, what is happening. The heavy cars were never shown as part of the train on the lists the grievor had in the locomotive, and the conductor in the yard had the switch list. It maintains that the conductor never told the grievor that he had not disconnected the loaded cars.

The Union points out that these events occurred in a yard environment, not on a main line, and that everything took place at 8 MPH or less. It suggests the Rules cited by the Company are mainly for main line operations. However, as the Employer points

out, the basic physics involved do not change. The Union also points out that, despite this incident, the grievor was allowed to continue working for an additional four hours.

The Arbitrator's conclusion is that Mr. Garofalo's handling of the train as it pulled out cars from MC92 was inappropriate. I accept that he was working on the incorrect assumption that he was only pulling a further twenty-four empty rail cars. However, that means he ignored the need for a cut, or simply took no account of just what it was Mr. Bica needed to disconnect from the twenty-four cars that would form part of the train. It is difficult, in hindsight, to determine just which factor caused the initial derailment of the wheel; Mr. Garofalo's handling of the initial movement away from track MC92, or his unplanned and urgent response to the unexpected train dynamics from the extra and heavy load. In either event, the responsibility falls to Mr. Garofalo and not to others for not informing him. I find in the circumstances the Employer had just cause for discipline.

As the Employer notes, the imposition of even minimal demerits for this event under the Brown system puts the grievor in a position for termination. Indeed, it suggests he was already in possession of additional demerits and thus given additional progressive discipline, although those additional demerits do not factor into this decision.

Mitigating Factors

The grievor began work with CN in 1990. At the time of this incident he was forty-six years old and had twenty-five years of service. During his career he has received a number of commendations and positive references. He has been active promoting sports

within his workplace community and the broader community. He has two dependent children ages four and eight. Between 2013 and 2014 the grievor went through some difficult personal situations with related medical consequences, but persevered with treatment and counselling leading to rehabilitation. Since his termination he has sought, but failed to find, suitable alternative employment.

Aggravating Factors – The Grievor’s Record

The grievor’s disciplinary record is poor. In May 2012 he received fifteen demerits for train handling issues concerning the pull apart of train M327 at Coteau. In June 2012, he received a further twenty-five demerits for breaching two sections of the Locomotive Engineer Operating Manual resulting in a broken knuckle. In December 2014, he was assessed twenty-five demerits for speeding while working as a locomotive engineer on a key train, a designation introduced as part of an effort to mitigate the chance of accident involving trains carrying dangerous commodities.

In March 2015 the grievor, who at that point had fifty-five demerits, was suspended following a train separation, where the grievor began pulling excessively before the breaks were fully released. These are the more recent events. Events further back in his record are not of assistance to the grievor’s position.

Decision

This is a serious culminating incident involving similar concerns to those already on the grievor's record. He has been given clear prior warning of the need to improve his train handling. He has been afforded the full advantage of a progressive discipline system. Regrettably, this is a case where, despite the grievor's long service, the mitigating factors are insufficient to justify the substitution of a penalty short of termination. As a result, the grievance is dismissed.

October 19, 2016



ANDREW C. L. SIMS
ARBITRATOR