

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4499

Heard in Montreal, October 12, 2016

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Company's assessment of twenty demerits to Conductor S. Mitchell for not complying with Rule 33 on February 9, 2015 which resulted in his discharge for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On February 9, 2016, S. Mitchell was employed as Conductor on train M31331-08 operating between Capreol and Toronto.

While operating through the Special Dangerous Zone between Mile 275 and 261 of the Bala Subdivision Conductor Mitchell's train exceeded the speed limit for a period of between forty and fifty seconds.

As a result of this alleged infraction Conductor Mitchell was summoned to an investigation on February 22, 2016 and was discharged three days later on February 25, 2016.

It is the Union's position, that the Company is in violation of Article 82, 85 and 85.5 along with Addendum 124 of the 4.16 Collective Agreement. The Union contends that the discipline assessed was unjustified, unwarranted discriminatory and in any case excessive.

The Union seeks to have the discipline assessed to Conductor Mitchell removed in its entirety. The Union further seeks to have Conductor Mitchell reinstated without loss of seniority and made whole for all lost wages, benefits and pension entitlement for the entire time that he has been discharged. In the alternative, the Union further seeks to have the Arbitrator to mitigate the penalty as he sees fit.

The Company's position is that Mr. Mitchell was responsible for the speed violation as he failed to properly inform his locomotive engineer that their train was exceeding the 35 MPH speed restriction while operating on the Bala Subdivision. Arbitral jurisprudence has also recognized the importance of following rules, particularly as they relate to the safety of employees, and the safe operating of trains.

Article 82 deals with discipline and more specifically, Addendum 124 confirms the agreement between the parties to use the Brown system of discipline. The grievor was notified in a timely manner, was afforded a fair and impartial investigation, the Company submits the discipline is warranted in accordance with the principles of the Brown system.

Article 85 deals with the application and interpretation of the Agreement: the Union has not brought up any argument in their grievance as to how the Company's actions were in violation

of any of the provisions of Article 85, including 85.5 (Workplace Environment). The Company submits the employee was not harassed in any way or at any time during the investigation process.

FOR THE UNION:
(SGD.) J. Robbins

General Chairman

FOR THE COMPANY:
(SGD.) O. Lavoie

Labour Relations Manager

There appeared on behalf of the Company:

- | | |
|---------------|---|
| O. Lavoie | – Manager Labour Relations, Montreal |
| D. Larouche | – Senior Manager Labour Relations, Montreal |
| A. Diagle | – Manager Labour Relations, Montreal |
| C. Michelucci | – Director Labour Relations, Montreal |

And on behalf of the Union:

- | | |
|--------------|---------------------------------|
| K. Stuebing | – Counsel, Caley Wray, Toronto |
| J. Robbins | – General Chairman, Sarnia |
| J. Lennie | – Vice General Chairman, Sarnia |
| J. F. Bedard | – Local Chairman, Montreal |
| S. Mitchell | – Grievor, Toronto |

AWARD OF THE ARBITRATOR

Nature of the Case

1. On February 26, 2016, the Canadian National Railway Company (CN) terminated Conductor Shane Mitchell after assessing him twenty demerit points. On February 9, 2016, Mr. Mitchell's train had exceeded the speed limit through what is called a "special dangerous zone". These zones have high density populations. The train in question was a "Key Train", a concept introduced after the Lac Mégantic tragedy, since it carried dangerous goods.

2. Mr. Mitchell had had fifty-nine demerit points on his record prior to this alleged culminating incident.

3. The Teamsters Canada Railway Conference (TCRC) argued that Mr. Mitchell committed no infraction. Moreover, even if the train exceeded the required speed limit for a short period, a measure short of termination would have been appropriate given the mitigating circumstances.

4. For the reasons below, the arbitrator has concluded that a written reprimand should be substituted for the 20 demerit points originally assessed.

Did the incident warrant discipline?

5. Mr. Mitchell was candid in his interview that his train had been speeding. He indicated that the speeding occurred for a brief period when he was speaking to the yardmaster at Capreol. This evidence was not contested.

6. The decisions put before the arbitrator indicate the seriousness of speeding in the railway industry: see, for example, [CROA&DR 2951](#). This is compounded in this case by the fact that a Key Train was speeding through a “special dangerous zone”.

7. CN has demonstrated that it had grounds for discipline in this case.

Should the arbitrator substitute some measure other than demerit points?

8. Mr. Mitchell's record stood at fifty-nine demerit points at the time of the incident. In addition, on May 18, 2105, CN had imposed a 14-day suspension on Mr. Mitchell for speeding in a temporary slow order zone. In January, 2014, CN had assessed Mr. Mitchell nine demerit points for a rules violation which had taken him to the precarious position of being just one demerit point away from sixty

9. In [CROA&DR 4144](#), Arbitrator Picher emphasized that employees near 60 demerit points have been put on clear notice that another serious infraction puts their employment in jeopardy.

10. The TCRC emphasized that the incident in question lasted only 40-50 seconds. It occurred on a 0.8% grade, which was a contributing factor. Moreover, running trades employees realize that sudden braking can lead to derailment, track damage or other disastrous consequences. It takes time to slow a train down properly and safely.

11. At the time Mr. Mitchell realized his train was speeding, he was speaking on the locomotive radio with the Capreol yard. He was relying to a certain extent, on the engineer to control the speed of the train. Therefore, the TCRC submitted that the incident was not severe enough to result in Mr. Mitchell's termination.

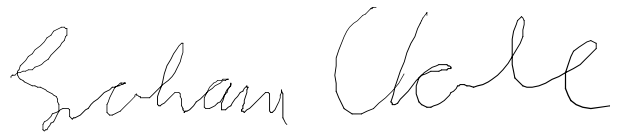
12. The arbitrator has been satisfied that mitigating factors exist to warrant substituting a written reprimand for the twenty demerit points originally assessed. The evidence was

not disputed that Conductor Mitchell was performing other duties when his train exceeded the speed limit. To some degree, he was reliant on the locomotive engineer maintaining proper speed when doing these duties: [CROA&DR 2230](#).

13. While this does not totally exonerate Conductor Mitchell who knew, or ought to have known, the train was going through a “special dangerous zone”, it is sufficient to mitigate the penalty in the circumstances of this case.

14. The arbitrator orders the substitution of a written reprimand for Conductor Mitchell in replacement of the twenty demerit points originally assessed. The arbitrator remains seized should any implementation issues arise from this decision.

November 14, 2016



GRAHAM J. CLARKE
ARBITRATOR