

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4508

Heard in Calgary, November 8, 2016

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the 25 demerits assessed as discipline to Conductor John Dionisio for “Your involvement with the injury of Conductor Trainee Alex McCallum while working as the conductor on train L54631 25 starting on January 25th, 2015”.

JOINT STATEMENT OF ISSUE:

On January 25th, 2015 Conductor Dionisio was assigned to train L546 at Oshawa and was also assigned a trainee Alex McCallum. During the tour of duty Conductor trainee McCallum sustained an injury while entraining the locomotive.

On February 3rd the grievor was required to attend a Formal Employee Statement in connection with the circumstances surrounding his alleged involvement with the injury of Conductor Trainee Alex McCallum while working as the conductor on train L54631-25 starting on January 25, 2015.

As a result of findings of the employee statement the grievor was assessed 25 demerits.

The Union contends the discipline assessed was unwarranted, unjustified and in the very least excessive the Union contend the grievor did not receive a fair and impartial hearing. The Union further contends that the notice to appear was not in keeping with the provisions of article 82.1 of the 4.16 Agreement.

The Union also objected to the inclusion of evidence provided by witnesses which may have had a bearing on the grievor’s responsibility in which the Union was not given the opportunity to question as per article 82.2.

The Union requests that the Company remove the discipline assessed and the grievor be made whole.

The Company disagrees and declines the Union’s request.

FOR THE UNION:
(SGD.) J. Robbins
General Chairman

FOR THE COMPANY:
(SGD.) V. Paquet
Labour Relations Manager

There appeared on behalf of the Company:

V. Paquet	– Labour Relations Manager, Toronto
K. Morris	– Senior Manager Labour Relations, Edmonton
A. Daigle	– Labour Relations Manager, Montreal
J. Boychuk	– General Manager Operations, Winnipeg

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Caley Wray, Toronto
J. Robbins	– General Chairman, Sarnia
J. Lennie	– Local Chairman, Port Robinson
R. Donegan	– General Chairman, Saskatoon
J. Thorbjornsen	– Vice General Chairman, Saskatoon

AWARD OF THE ARBITRATOR

The grievor was the assigned conductor position at Toronto South on the evening of January 25, 2015. The crew consisted of a locomotive engineer, the brakeman, a conductor trainee and the grievor. The crew was assigned to deliver two cars to a nearby customer inside the rail yard. As part of their duties that evening, the conductor and trainee made a cut on the main track, holding onto three cars, and the movement then pulled west to clear the switch. The conductor and the trainee then walked to the switch, where the grievor was located, and conducted a job briefing. It was determined in the briefing that the grievor would ride the point of the lead car while the cars were being shoved to the customer. The conductor and trainee were to walk back and then entrain on to one of the units in the locomotive consist. The details of the job briefing at the switch were not related to the engineer and he was unable to see any of the crew members from his location inside the cab of the locomotive.

After the briefing, the conductor and the trainee began walking back to the second locomotive where they planned to entrain and ride to the customer location. The

brakeman took up his position on the leading car to protect the movement. As the grievor was entraining the locomotive ahead of the trainee, he heard the brakeman broadcast over the radio that he was OK for eight cars and that the engineer could start shoving. The engineer repeated the instructions he received from the brakeman and initiated movement of the train. At the same time the train started to make a reverse movement, the trainee was in the process of entraining the locomotive.

The trainee then placed both hands on the grab irons and his left foot on the footboard. Just as he lifted his right foot up off the ground, his left foot slipped from the footboard. This caused him to fall, landing on his left leg on the ground. The grievor missed seeing the trainee's actual fall but saw him on the ground. He radioed the engineer to stop immediately. The RTC Chief was then notified about the incident and the trainee was transported to hospital to deal with his broken leg.

The Union submits that the grievor was not given a fair and impartial hearing, claiming in that regard that the charges against the grievor are not outlined in the notice and that it is generally vague and inconsistent. The Notice to Appear states that the grievor was required to attend an investigation *"... in order to provide a formal employee statement in connection with circumstances surrounding your alleged involvement with the injury of conductor trainee Alex McCallum while working as the brakeman on the train L54631-25, starting in January 25, 2015"*.

The arbitrator agrees with the Company that the grievor clearly knew from a reading of the Notice of Hearing that the subject matter of the investigation was the circumstances which led up to the injury sustained by the trainee. It is not necessary for the Company to provide a detailed description of the incident leading to the accusations or charges against him (See **CROA&DR 2073**). The grievor was well aware from the Notice to Appear that he would be asked a host questions surrounding the incident and the injury to the trainee. There is no evidence that he was prejudiced by any surprise questions or the manner in which the overall investigation took place. The arbitrator finds that the investigation was properly conducted pursuant to article 82.1 of the collective agreement. Nor do I find that the absence of the download from the investigation was prejudicial given that there was no real dispute that the train was travelling around 2 mph when the incident occurred.

Turning to the merits, the Company submits that employees assigned to a trainee, like the conductor was on January 25, 2015, must be in a position to provide continuous monitoring throughout the shift. The Company referred in that regard to Company Operating Bulletin GLD 14080 and Great Lakes Notice No. 1408-013 issued in August 2014. The Company maintains that the grievor had an obligation as the conductor to observe the trainee and correct errors in the actions that present a safety hazard. Further, the Company notes that the grievor, like the brakeman, failed to include the engineer in the job briefing.

The Union states that entraining and detraining is part of the job and that the trainee was fully versed on how to perform these tasks, having exceeded the minimum number of training trips set out at article 65A.7 of the collective agreement. The Union further submits that this was an unavoidable accident; the trainee simply miscalculated his step.

The arbitrator notes that it is undisputed that the movement was traveling 2 mph when the grievor's foot slipped off the footboard after he attempted to entrain on to the locomotive. The grievor had experience in entraining prior to the incident, having completed classroom training, boot camp and worked forty-nine training trips, which exceeded the minimum forty-five trips set out in the collective agreement. Further, employees are allowed to board moving equipment and there was no reason to believe or suspect that the trainee could not properly entrain on his own that evening.

Under GOI section 8, 12.5, employees are required to communicate their intention to entrain to the person in charge of the movement. The engineer had no idea in this case that the crew would be entraining and he further assumed that the crew were all on the point when he was told by the grievor that he could start shoving. The engineer further indicated at the investigation that he would have been in throttle 1 "just creeping" had he known the crew were about to entrain.

To say that the incident would have happened anyway as the Union submits is an unacceptable response under the circumstances given the reasonable inference that

a slower speed might have made it easier for the trainee to entrain. Further, there was a clear breach of the safety rules with the engineer being absent from the job briefing. The absence of the job briefing ultimately left the engineer in a position where he was never told about the crew entraining before he began shoving.

In summary, had the safety rules been observed, I agree with the Company that the incident and injury to the trainee could have been prevented. This was not a case of inevitable accident. A reduction in the movement's speed might have facilitated the entraining by the trainee and reduced the chance of a serious injury, as occurred here. Indeed, the trainee himself stated at the investigation that that he was not expecting the engine to start moving as he entrain: *"...it had just started to move maybe 1 or 2 mph may have thrown me off a bit."*

For these reasons, I find that discipline was appropriate. The penalty, however, is to be reduced from 25 to 20 demerits under the circumstances, particularly given that the brakeman, who also played a central role in the events that evening, was only penalized with 20 demerits.

December 5, 2016



JOHN MOREAU
ARBITRATOR