

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

**CASE NO. 4519**

Heard in Montreal, December 14, 2016

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE  
MAINTENANCE OF WAY EMPLOYEE DIVISION**

**DISPUTE:**

Dismissal of J. Neville.

**THE UNION'S EXPARTE STATEMENT OF ISSUE:**

On April 1, 2016, the grievor, Mr. John Neville, was issued a Form 104 stating that he was dismissed from Company service for a Track Occupancy Permit violation that occurred on March 6, 2016. A grievance was filed.

The Union contends that the grievor took full responsibility for the violation; the grievor is a long service employee having commenced Company service in 1990; the assessment of dismissal was excessive, unwarranted, and unfair.

The Union requests that the grievor be reinstated into Company service immediately without loss of seniority and with full compensation for all wages and benefits lost as result of this matter.

The Company denies the Union's contentions and declines the Union's request.

**FOR THE UNION:**

**(SGD.) G. Doherty**

President

**FOR THE COMPANY:**

**(SGD.)**

There appeared on behalf of the Company:

D. Guerin – Senior Director, Labour Relations, Calgary

And on behalf of the Union:

G. Doherty – President, Ottawa

D. Brown – Counsel, Ottawa

H. Helfenbein – Vice-President, Medicine Hat

## **AWARD OF THE ARBITRATOR**

### **Nature of the Case**

1. In April, 2016, CP terminated Snow Fighter Crew Foreman John Neville's employment following a horrifying collision between his hi-rail truck and a CP train. Mr. Neville had failed, *inter alia*, to obtain a new Track Occupancy Permit (TOP) or make any announcements on the radio before entering the main track.

2. A short video (Exhibit 3) shot from the train showed two CP employees, including Mr. Neville, running from their truck just seconds before the train smashed into it. The video showed parts of the truck flying in the air after the collision. Fortunately, neither Mr. Neville, his colleague nor employees on the train sustained any injuries.

3. The only question for the arbitrator was whether to intervene and substitute a penalty other than dismissal. For the reasons which follow, the arbitrator has decided to reinstate Mr. Neville, without compensation, and subject to certain restrictions.

### **Analysis and Decision**

4. CROA case law upholds the imposition of significant discipline for serious rules violations: see, as examples, [CROA&DR 4050](#) and [CROA&DR 4361](#). However, an arbitrator must consider the overall context when considering the discipline imposed. A rules violation does not lead to automatic termination of employment.

5. Mr. Neville, a long-time CP employee with over 25 years' service, took full responsibility for the incident (Company Documents (Ex-2); Tab 6; Q&A 52).

6. At the time of the incident, Mr. Neville did not sport a spotless discipline record. Initially, from his hiring in 1990 to the Fall of 2006, nothing appears on his discipline record. In 2007, Mr. Neville received 30 demerit points for a TOP violation. CP imposed demerit points on other occasions, but those did not involve rules infractions. CP also terminated Mr. Neville in 2013. The parties settled the resulting grievance by agreeing to a suspension.

7. The arbitrator shares the TCRC MWED's view that Mr. Neville's negligent actions, while extremely serious, did not break the bond of trust in the way a theft might have. Moreover, Mr. Neville's previous TOP infraction had taken place almost 10 years before in 2007. The TCRC MWED noted that remedies have been issued in similar situations which maintained an employment relationship while addressing CP's legitimate interests.

8. The arbitrator is satisfied that Mr. Neville can be reinstated back into employment, but with conditions that protect CP's interests. In that regard, the arbitrator finds persuasive the decisions of Arbitrator Picher in [CROA&DR 2672](#) and Arbitrator Albertyn in [CROA&DR 4361](#).

9. Accordingly, CP shall reinstate Mr. Neville in employment without loss of seniority, but without compensation for wages and benefits lost. He is returned to a demoted position in which he will have no responsibility for holding track occupancy permits. CP shall decide when that TOP condition may be removed. Mr. Neville's employment record will record the time between his termination and reinstatement as a suspension.

10. The arbitrator remains seized for any questions arising from this award.

January 12, 2017

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**GRAHAM J. CLARKE**  
**ARBITRATOR**