

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

CASE NO. 4553

Heard in Calgary, May 9, 2017

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal on behalf of Conductor B. Fleishhacker of Saskatoon, Saskatchewan, appealing the discipline of 15 demerit marks for failure to remove 3 handbrakes on the G80551-16 on 2015/12/17.”

JOINT STATEMENT OF ISSUE:

On December 17, 2015, Conductor Fleischhacker worked Train G80551-16, and was determined to have failed to remove handbrakes on this train, in violation of GOI 7.9 (c) and CROR 106.

The Company conducted an investigation of the incident and determined that Mr. Fleischhacker had violated the CRO Rule and Company instructions, and was deserving of the discipline of 15 demerit marks.

The Union contends that the discipline assessed was excessive and should be reduced to a much lesser degree.

The Company disagrees with the Union’s contentions.

FOR THE UNION:
(SGD.) R. Donegan
General Chairman

FOR THE COMPANY:
(SGD.) D. Brodie for K. Madigan
VP, Human Resources

There appeared on behalf of the Company:

K. Morris	– Senior Manager, Labour Relations, Edmonton
M. Galan	– Manager Labour Relations, Edmonton
W. Manning	– Transportation Supervisor, Saskatoon

There appeared on behalf of the Union:

M. Church	– Counsel, Caley Wray, Toronto
R. S. Donegan	– General Chairperson, Saskatoon
J. Thorbjornsen	– Vice General Chairperson, Saskatoon
B. Fleischhacker	– Grievor, Saskatoon

AWARD OF THE ARBITRATOR

The grievor was hired as a conductor by CN in May 2010. On December 17, 2015 the grievor's crew were ordered to pick up a train of 104 cars at Oban and continue on to Wainwright, Alberta. The grievor and his Locomotive Engineer first travelled with the locomotives for about 65 miles from Saskatoon to Oban. The grievor, as per the CRO Rules, was required to perform a number 1A brake test after hooking up the train cars. The test involves first pumping up the train with sufficient air and then for the handbrakes to be released. The conductor then walks the length of the train to inspect for proper brake application and brake release in each car.

The grievor indicated at his investigation that, after putting the engines onto the train, he proceeded to release 12 handbrakes. He then proceeded to check three more cars for handbrakes but did not find any. The grievor indicated at his investigation that he did the following:

I returned to the head end and once we had qualified to perform 1A air test I instructed my engineer to set up the brakes. I exited the head and started walking my train and inspected for proper air brake application. Upon reaching the tail end I confirmed proper set up and asked for breaks to be released, once air pumped up again and performed SBU test. Once the tail end released and SBU test good, I walked back to the head end on the opposite side and once back in cab I confirmed with my engineer sufficient release. We called the RTC and notified them we were ready to go. Upon receiving authority to depart we proceeded to Wainwright.

As the train approached Wainwright, a hotbox detector reported elevated heat readings on the train. The RTC instructed the grievor to have the outbound crew perform a roll-by inspection given the high readings. The outbound crew found

handbrakes applied on three cars in the middle of the train. The handbrakes were removed. The outbound crew then made their way to the front of the train before proceeding on their assignment.

Subsequent to the investigation, the Company determined that the grievor was deserving of discipline based on his failure to check for and remove handbrakes. He was assessed 15 demerits. The Union filed a grievance stating that the discipline was excessive and should be reduced.

The Company noted in its submissions that the grievor was questioned about the incident by Assistant Superintendent Ray Adams. Mr. Adams indicated in his statement, which was presented to the grievor and the Union as part of the investigation, that the grievor told Mr. Adams that leaving three handbrakes on was not really a "big deal." Mr. Adams felt that the grievor did not appreciate the severity of leaving handbrakes on and the potential for damaging cars, possibly leading to a derailment. The Company also noted that there was a delay of the train due to the outbound crew having to walk back and remove the handbrakes.

The Union submits that a partially released handbrake can be very difficult to detect. The Union noted that some types of brake rigging will leave the brake shoes very close to the wheels even when the brakes are completely released. A partially released handbrake may, as a result go undetected during an inspection. The Union added that the grievor followed proper procedures by walking the length of the train to

ensure that the air brakes were released. The Union also points out that there was no damage or any significant delay to the train. Further, the Union noted that the train passed over some 13 automated hotbox detectors before any concerns arose. The Union submits that any potential problem with the cars was detected and corrected without any impact on the train operations or the safety of the train.

The Union maintains that the Company has failed overall to prove to a reasonable degree that the grievor was negligent or failed to take proper care during the 1A inspection of the train. Finally, the Union notes that the grievor was completely honest during his investigation and readily admitted that he might have missed a few handbrakes during his inspection: *"...Yes I was looking for additional handbrakes but I regretfully admit that it is possible that I may have missed some."*

After considering all the facts, I am of the view that the grievor failed to properly inspect the locomotive during his 1A inspection of the train and that there is cause for discipline. This is not an instance of simple inadvertence but rather a more serious lapse by the grievor in the performance of his duties. The importance of proper brake inspections cannot be understated. This case is similar in my view to **SHP-637** where Arbitrator Picher also dealt with a similar situation involving a failure to identify handbrakes. He states:

Having reviewed the evidence, the arbitrator is satisfied that the grievor and his workmate did, contrary to their obligation as employees, failed to identify and correct the handbrake on a car within the body of train M30131-04 during the course of their inspection. The fact that the handbrake on the car was not released did, it cannot be disputed, create a circumstance of some peril, as overheating of the wheel could have led to a collapse of the equipment and a possible derailment. Fortunately

that was avoided by the vigilance of the company's hotbox detector system.

The grievor is 28 years old with less than five years of overall service. The grievor minimized the significance of the incident when questioned by the Assistant Superintendent. He has an extensive disciplinary record, particularly for an employee of such short service, including having accumulated in excess of 60 demerits as well as four written reprimands and two suspensions. He was terminated for exceeding 60 demerits but was subsequently reinstated with the warning by the Arbitrator that his employment would be in serious jeopardy if further disciplinary incidents occurred. Under the circumstances, bearing in mind in particular the level of seriousness of the incident and the grievor's past discipline, I find no basis to adjust the penalty of 15 demerits.

The grievance is dismissed.

May 15, 2017



JOHN MOREAU
ARBITRATOR