

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

CASE NO. 4570

Heard in Montreal, July 12, 2017

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the assessment of 20 demerit points to Conductor D. Couturier of Winnipeg, Manitoba.

JOINT STATEMENT OF ISSUE:

On September 5th, 2015, the Grievor worked as Assistant Conductor on train X31732-03. During the tour of duty, the Grievor's train exceeded the 35 MPH speed restriction for trains carrying special dangerous goods between mile 241.0 and 251.4 on the Reddit subdivision. The Company conducted an investigation, and assessed discipline in the amount of 20 demerit points.

The Union's position is that the discipline was excessive in all of the circumstances, and should be expunged or reduced.

The Company disagrees with the Union's position.

FOR THE UNION:
(SGD.) R. S. 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
C. Michellucci	– Director Labour Relations, Montreal
M. Boyer	– Senior Manager Labour Relations, Montreal
S. Roch	– Manager Labour Relations, Montreal
L. Williams	– Manager Labour Relations, Toronto

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
J. Thorbjornsen	– Vice General Chairman, Saskatoon
D. Couturier	– Grievor, Winnipeg

AWARD OF THE ARBITRATOR

Conductor Douglas Couturier was hired by the Company on April 28, 1984. The Grievor had accumulated 31 years of service with the Company at the time of the issuance of discipline.

Prior to August 2015, Mr. Couturier had accumulated a total of 275 demerits and three written reprimands throughout his career. The latest measure of discipline assessed was 20 demerits for a missed call in August 2015, which was contested by the Union and heard on the same day as this case. Over his career, the Grievor was disciplined four times for rule violations, the latest of which occurred in 2001.

The facts surrounding the present arbitration are simple.

On September 4, 2015, the Grievor was deadheaded to his away from home terminal of Sioux Lookout in Ontario. He arrived at 12:25pm and was off duty for a period of 13 hours until 2:00am on the following day, September 5, 2015. Mr. Couturier reported to duty to rescue a train and bring it back into Sioux Lookout. After completing this assignment, at 5:10am, the Grievor had the opportunity to book up to eight hours of rest, as per the 4.3 Collective Agreement, but elected not to do so.

Later the same day, Mr. Couturier accepted a call to work on Train X31732-03, carrying special dangerous commodities, destined to Winnipeg and for which he reported

to duty at 6:45am and booked off at 3:50 p.m. on the same day, some nine hours later. The Grievor was aware that his train was carrying dangerous goods.

During their assignment, at approximately 3:00am, the Grievor's crew entered the Greater Winnipeg Area travelling at the speed of 62 MPH at mile post 241. CN's Prairie Sub Region Timetable No. 21, covering the Reddit subdivision, mandates that trains transporting special dangerous commodities do not exceed the speed of 35 MPH between mile 241 and 251.4.

An investigation was held on September 17, during which the Grievor acknowledged that his train had gone over the speed limit. He added that he, and the Assistant Conductor, had failed to advise the Locomotive Engineer that the train was going some 27 MPH over the speed limit, as was his responsibility. Mr. Couturier explained that, at that time, he had been on the job for some 18 hours and that the speed limit "simply slipped off his mind" due to fatigue.

Following the investigation, the Company deemed that Mr. Couturier and his crewmembers shared the responsibility for the speeding violation. He and Mr. Norm Marion, the Assistant Conductor, were both assessed 20 demerits and Locomotive Engineer Vaughan Alexander was assessed a 14 days' suspension.

It is not disputed that Mr. Couturier committed speeding, a violation of CROR 33. In **CROA&DR 3658**, Arbitrator Moreau stated that “As noted in **CROA&DR 2951**, it has long been recognized that speeding infractions can be the basis for serious discipline”.

In **CROA&DR 4053**, Arbitrator Picher upheld the assessment of 20 demerits to a Locomotive Engineer that had violated CROR 33 on three separate days, by exceeding the 10 MPH speed limit in the terminal he was operating in, sometimes reaching 15 MPH. The Arbitrator added: “I am also satisfied that the assessment of twenty demerits was well within the appropriate range of discipline for such an infraction”.

In **CROA&DR 3066**, Arbitrator Picher upheld a 90 days’ suspension for the grievor’s “blatant disregard” for the speed limit, going at 29 MPH in a 6 MPH zone. The Arbitrator stated that had it been for the grievor’s clean record and long service, a more severe discipline could have been assessed.

Arbitrator Schmidt, in **CROA&DR 4340** ordered that the grievor be reinstated without compensation. He had been assessed 30 demerits for speeding infractions. The Arbitrator wrote:

“The Union has not provided any jurisprudence to me where less than 25 demerits had been imposed for speeding infractions. Given that the grievor here did commit two speeding infractions during the operation of his train, and given his conscious decision to ignore CROR Rule 33 as described above, the instant case would not warrant a departure from the generally established principles with respect to this type of infraction were there no mitigating factors to consider.”

The Union argues that the Grievor's violation was due to fatigue and this should be considered a mitigating factor, along with Mr. Couturier's few operating rules violation. To support its position, the Union invoked **CROA&DR 3702**.

With all due respect, I find that this decision has little bearing with the present case. In that case, while Arbitrator Picher deemed that fatigue explained why the grievor had a momentary lapse, therefore causing an accident, he nevertheless stated:

“[...], [the grievor's fatigue], however, does not excuse what occurred, as the employee remains the ultimate watchman and guarantor of his or her own physical condition while operating a train in what is obviously a highly safety-sensitive position. I am compelled to conclude that when Mr. Grzesiak did take on his assignment he knew, or reasonably should have known, that he would find himself operating his train later during the course of the assignment at a point where he would not have slept for close to twenty-four hours.”

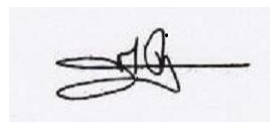
Moreover, the grievor's train in **CROA&DR 3702** had suffered delays for which the company was responsible for. Such was not the case here and Mr. Couturier had the opportunity to book some eight hours of rest prior to his assignment; his state of fatigue was solely the result of his own decision. For this reason, I cannot consider fatigue to be a mitigating factor in this instance.

Mr. Couturier's train, which was transporting special dangerous goods, was travelling at almost twice the speed limit in the greater Winnipeg area. An assessment of 20 demerits for such a violation falls within the range of what is regarded as reasonable by this Office's jurisprudence. Additionally, it must be underlined that the Assistant Conductor on the Grievor's train was also assessed 20 demerits for the same violation.

Mr. Couturier's length of service and relatively good record regarding rules violations are not sufficient to justify that the penalty be reduced.

Thus, for all of the above-mentioned reasons, the grievance is dismissed.

July 20, 2017

A handwritten signature in black ink, appearing to read 'M. Flynn', is centered within a light gray rectangular box.

**MAUREEN FLYNN
ARBITRATOR**