

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4592

Heard in Calgary, November 15, 2017

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge of Conductor B. De Strake of Lillooet, BC for “failure to complete a job brief in accordance with GOI 8.12.1, violation of CRO Rule 111, 104(j), General Rule A(xii) while working as Conductor on L57151-29 resulting in a head on collision at 20.8 MPH with train L57051-29 at Potter on April 30, 2017”.

JOINT STATEMENT OF ISSUE:

On April 30, 2017 the grievor was assigned as the Conductor on train L57151-29 departing Lillooet, BC travelling North toward Williams Lake, BC. Train L57151-29 was involved in a head on collision with train L57051-29 at Potter on the Lillooet subdivision at 20.8 MPH.

On April 30, 2017 Conductor De Strake lined the switch for his train, L57151-29 into Potter siding and stopped at the North Switch. Conductor De Strake confirmed that the North switch was lined for the route to be used by train L57051-29 travelling South from Williams Lake, BC. Conductor De Strake heard Conductor Charlie on train L57051-29 do his advance broadcast – one mile to Potter. Conductor De Strake then derailed and lined the switch in front of train L57051-29 on top of his own train which resulted in a head on collision at 20.8mph.

Subsequent to the formal investigation, the grievor was deemed culpable for the head on collision between L57151-29 and L57051-29 on April 30, 2017 and was discharged.

The Union states that the facts are not in dispute, but goes on to request that the Company re-visit the discipline assessed and substitute an assessment of discipline short of discharge.

The Company has declined the Union’s request.

FOR THE UNION:

(SGD.) J. Holliday

General Chairman, Division 105

FOR THE COMPANY:

(SGD.) D. Crossan for K. Madigan

Vice-President, Human Resources

There appeared on behalf of the Company:

D. Crossan

– Manager Labour Relations, Prince George

K. Morris

– Senior Manager Labour Relations, Edmonton

J. Thompson

– General Manager, Edmonton

B. Kambo – Labour Relations Manager, Edmonton
J. Reid – Trainmaster, Vancouver

There appeared on behalf of the Union:

K. Stuebing – Counsel, Caley Wray, Toronto
J. Holliday – General Chairman, North Vancouver
B. De Strake – Grievor, Lillooet,

AWARD OF THE ARBITRATOR

As the Joint Statement of Facts reflects, there is no dispute that on April 30, 2017, Conductor De Strake, the Grievor, was responsible for the mis-aligning of a switch resulting in a head-on collision of train L57051-29 with train L57151-29.

On that day, the Grievor received his orders as Conductor on North bound train L571 from Lillooet to Williams Lake. On route, he was required to take a siding in order to allow an opposing train, L570, to pass on the main line at Potter station. When his train arrived at Potter, the Grievor de-trained and lined the switch allowing his train to proceed into Potter Siding. After he had done that, the Grievor notified the Railway Traffic Controller (RTC) that the track was clear and then returned to the engine to await for train L570 to pass on the mainline. I am satisfied, from a review of the evidence, that the Grievor failed to go through the necessary protocols once his train was stopped on Potter Siding either to inspect his train (although, to be fair, there was little time for that) or to ensure that the appropriate communication protocols were followed in advance of the switching.

While seated in the engine of the train, the Grievor heard the Conductor reporting from the opposing train that they were approximately 18 miles away from Potter Siding.

He allows that he stayed in the Engine and attended to paperwork that he says was required of him. It appears he was taken a bit by surprise when he heard that the opposing train was only one mile from Potter siding. He detrained to perform a roll by inspection of train L570 as he was required to do by CROR 110. He walked up to the switch and positioned himself adjacent to the train track to perform a roll by inspection (personnel on the opposing train believed he was standing too close to the train and switch). For reasons known only to the Grievor, he decided to re-align the main line switch into the reverse position - just as train L570 approached it - and routed the train directly into train L571. Essentially, he set the track for a head-on collision; which is exactly what happened.

The personnel on the opposing train said that while they had a green light to proceed, that light suddenly and unexpectedly turned red (coincidental with the switching of the track by the Grievor) and although they took emergency measures to stop the train, it collided with the Grievor's stationary train, sitting on the siding, at a speed of 20 miles per hour.

Both crew members from the opposing train were injured and submitted claims under WCB. As at the date of the hearing, the Grievor's locomotive engineer, who was also injured, continued to remain off work and is receiving benefits.

Following its investigation, the Company determined that the Grievor had failed to comply with GOI 8.12.1; CROR 111; 104 (J) and General Rule A (xii) and the Grievor was discharged.

The Union does not dispute the facts but rather argued that the Grievor's personal circumstances and the circumstances of the incident, when taken along with the Grievor's genuine remorse and apology, warranted a level of discipline other than dismissal.

The Union points out that the Grievor explained his error in thinking that he had to get out, line the switch into the siding and inspect the roll by. His explanation was:

"I was going over my paperwork at the time looking at my Clearances, x-ing out the ones that were done, and getting my switch list in order for my set out. All I can figure is I was looking at Clearance #2004 and saw I had an item 9 on a switch, and had it in my head that I had to line the switch for the roll by"

He accepted the fact that he was standing too close to the switch when the roll by occurred. When he was asked if there was a way that this accident could have been avoided, the Grievor allowed that, in the future, crew members exiting the locomotive should verbalize what they intend to do once on the ground. As well, he acknowledged that it would be necessary to have designated standing points at routine meet locations that are away from the switch so that muscle memory of lining switches does not play a factor moving to a safe inspection location. Essentially, the Union's explanation for the Grievor mis-aligning the switch was that it was a "*muscle memory*" reaction.

The Grievor denied that there were any other distractions which affected his performance. Accepting the veracity of that statement would have been easier had the Grievor provided his cell phone records for that day - which were requested but not fully provided. Clearly, he was not paying attention to the very job/task that was assigned to him that day. While it cannot be expected that employees will reach a standard of perfection on a daily basis, when “...errors or mistakes flow from inattentiveness or extreme carelessness - factors which are in control of the employee - the employer may properly discipline the employee.” (RE: *Air Canada v. C.A.L.E.A.* [1981] 4 L.A.C. (3d) 68; para. 24). Here, there is no question that discipline was warranted. Is Discharge too excessive in all the circumstances?

The Grievor is thirty-three years old and has been with the Company since April 2011. He has been assessed discipline on three previous occasions including a written reprimand in 2013 relative to lining switches in violations of the rules.

I accept that the Grievor’s apology, which he provided to the Company in written form (Ex. 7 – Union’s Brief) and at the hearing to this board, was both genuine and remorseful. However, the error committed by the Grievor was almost as bad as it gets and could have had fatal consequences. Similar to the comments made in **CROA 2791**, I am satisfied that since neither his length of service nor his prior disciplinary record are compelling from the standpoint of mitigation, the discharge here was for just cause and that it is not an appropriate case for substitution of penalty.

I note that, notwithstanding the injuries and problems that he caused, letters in support of the Grievor were signed by his crew members and submitted in evidence. While I laud the commitment and loyalty of his fellow crew members, the severity of the Grievor's error cannot be mitigated by their support. Accordingly, if the Grievor is to resume his employment with the Company, it is a decision for the Company to make rather than this board.

The grievance is dismissed.

January 5, 2018

A handwritten signature in black ink, appearing to read "R. Hornung", positioned above a horizontal line.

RICHARD I. HORNUNG
ARBITRATOR