

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4596**

Heard in Calgary, November 16, 2017

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the dismissal (reduced to a time served suspension of 98-days) of Conductor Brent Grossett.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

Following an Investigation, on July 29, 2016 Conductor Grossett was assessed the following; *"Please be advised you have been dismissed from Company Service as you have breached the bond of trust necessary for continued employment with the Company as evidenced by your prior discipline record and the culminating incident of: Crossed drawbars which resulted in damage to CP 8716 and delay to Train 235-08 on July 8, 2016 while employed as a Conductor and your failure to immediately report this accident/incident to the RTC, Superintendent, Calgary Operations Centre in violation of GOI Section 11, Item 6 and your failure to be forthcoming with respect to the reason for the delay to Train 235-08 when you reported such to the RTC."*

On October 4, 2016, the parties entered into a reinstatement agreement which allowed the Union to continue with their grievance for discipline and compensation for Mr. Grossett.

The Union contends a 98-day suspension to Mr. Grossett for this incident is excessive. As noted and not refuted in Mr. Grossett's statement Mr. Grossett advised the following *"I reported the problem to the Director, planner, outbound crew, and shop. I knew I would be questioned on the incident, and I was. I told Mr. Purdon exactly what happened. I now understand I should have reported these details immediately."*

Education on the proper process of full reporting would have been the path to take. Outright dismissal, then reinstatement into a 98-day suspension without pay is excessive. There was no malice or fraudulent intent by Mr. Grossett. Mr. Grossett as shown within his statement that he was educated moving forward.

The Union requests that the 98-day suspension be expunged and Conductor Grossett be made whole for all loss of earnings with interest, without loss of benefits/pension and seniority. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and denies the Union's request.

FOR THE UNION:
(SGD.) W. Apsey
General Chairman

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

S. Oliver – Labour Relations Officer, Calgary
 L. McGinley – Manager Labour Relations, Calgary

There appeared on behalf of the Union:

K. Stubeing – Counsel, Caley Wray, Toronto
 L. Daley – Vice General Chairman, Revelstoke

AWARD OF THE ARBITRATOR

Brent Grossett, the Grievor, joined the Company on April 16, 1991. On July 29, 2016, he was dismissed from the Company's service based on his prior discipline record and a culminating incident which occurred on July 28, 2016. On that day he was responsible for crossed draw bars which resulted in damage to CP8716 and the consequent delay of train 235-08. He failed to immediately report this accident to the RTC. When he did so, he was not forthcoming with respect to the reasons of the delay to train 235-08 and his involvement in the same.

The dismissal was subsequently reduced to a 98 day suspension. The Union contends that the discipline assessed was unwarranted and excessive in all of the circumstances and requests that the Grievor be reinstated without loss of seniority and benefits or, otherwise, that the penalty be mitigated.

Prior to this incident, the Grievor had accumulated a total of 110 demerits and two suspensions (Company Brief, Tab 4). During the course of which, he accumulated a career total of 19 train accidents (Tab 5): 3 of which involved draw bar incidents resulting

in damages to equipment; 7 switching incidents; and 8 incidents of improper operation, some of which resulted in damage to equipment.

In his statement during the investigation, the Grievor admitted that he did not report the cross-coupling issue to the Locomotive Engineer nor did he report it to the RTC or his Supervisor. His Supervisor's memo relative to his discussion with the Grievor (Tab 6) notes that he:

“...called Conductor Grossett... regarding the air-flow issues... He indicated they had crossed draw bar while making a joint at the south end of track 10 at Spence, this damaged the air hose and angle cocks/piping resulting in air-flow issues...”

The Train Master's memo reflects the Grievor's admission that he did not advise the OC/RTC, nor his Locomotive Engineer, that the crossed draw bar was responsible for the air leak which caused the train delay.

There is no dispute that failing to report damages to equipment, especially those involving resulting train delays are a serious violation of the rules and operational requirements. Employees, such as the Grievor, work largely in unsupervised environments. The Company has a reasonable expectation that employees will follow the rules and report all incidents immediately as they occur.

The Union suggested that the Grievor, upon discovering the air leak, advised the Locomotive Engineer of the same. However, at Question #22 of his statement, the Grievor admits that he did not advise the Locomotive Engineer of what had occurred. Rather he stretched ahead one or two cars to “look at it” and could hear an air hiss. After

attempting to resolve the issue himself, the Grievor ultimately spoke with the Locomotive Engineer advising him only that “*air was leaking*”. Although belatedly reporting the incident, the Grievor did not take responsibility either with the Locomotive Engineer, or the Diesel Doctor, that he was responsible for the leak.

The Union also alleges that the disparity between the suspension levied to the Locomotive Engineer and the Grievor (the Locomotive Engineer received a 30 day suspension) was unfair and unjust. While there is a disparity it is impossible for me, given the absence of comparable disciplinary records, to determine whether or not the disparity is, in fact, unfair as the Union alleges. One thing is nevertheless clear: irrespective of the Engineer’s subsequent complicity, he essentially came “late to the party” in that the Grievor did not initially disclose his culpability (Q&A 14 – 20).

The Grievor was culpable for the crossed draw bars. It was his responsibility to immediately report the incident. The facts disclose that he did just the opposite. He did not report the incident nor initially accept responsibility.

After a full investigation and review of the facts and circumstances surrounding the incident, the Grievor was dismissed and that dismissal was subsequently reduced to a 98 day suspension.

In the circumstances, a 98 day suspension is not unreasonable, arbitrary nor excessive. This is especially so keeping in mind the Grievor’s disciplinary record (which

include 3 disciplinary incidents involving crossed draw bars) and the number of train accidents in which he was involved. In fact, only 7 months prior, the Grievor was assessed a 30 day suspension for running through a switch on top of a further 7 day suspension (2014) for a switching issue resulting in derailment of the tail end car. As pointed out by the Company at paragraph 33 of its brief:

“...the Grievor had previously been involved in 3 (three) train draw bars accidents/incidents resulting in damages to equipment, as well as 7 (seven) switching incidents and 8 (eight) incidents of improper operation some of which resulted in damages to equipment.”

Taking into consideration the Grievor’s conduct in this matter, along with his previous record, I am satisfied that the penalty of the 98 day suspension is not excessive.

The grievance is dismissed.



January 26, 2018

RICHARD I. HORNUNG
ARBITRATOR