

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4613**

Heard in Calgary, February 7, 2018

Concerning

**CANADIAN PACIFIC RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of a fifteen (15) day suspension and dismissal issued to Rail Traffic Controller Jean-Phillipe Simard on July 17, 2017.

**JOINT STATEMENT OF ISSUE:**

RTC Simard was issued a letter from the Company informing him of the assessment of a fifteen (15) day suspension for the following reason; "... as a result of incorrectly voicing TOP 321 as TOP 320. This incorrect TOP number was not caught or corrected, when the foreman repeated the TOP back. This is a violation of CROR Rule 136."

RTC Simard was issued a letter from the Company informing him of his dismissal for the following reason; "This is directly in connection with the events surrounding cars having been left in the siding at Hurkett with no additional method of protection."

**Union's Position:**

The Union contends that the assessment of discipline in all disputes was excessive and not progressive and the dismissal of RTC Simard is not warranted.

The Union requests that RTC Simard be reinstated without loss of seniority and be made whole for all lost wages and benefits.

**Company's Position:**

The Company does not agree and finds that after fair and impartial investigations, RTC Simard was reasonably assessed disciplined in line with the principles of progressive discipline.

The Company denies the Union's request.

**FOR THE UNION:**  
**(SGD.) J. Bailey**  
**General Chairperson**

**FOR THE COMPANY:**  
**(SGD.) C. Tsoi**  
**Labour Relations Officer**

There appeared on behalf of the Company:

C. Tsoi	– Labour Relations Officer, Calgary
S. Oliver	– Labour Relations Officer, Calgary
W. McMillan	– Labour Relations Officer, Calgary
J. M. Ross	– A.V.P. Transportation, Calgary

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Caley Wray, Toronto
J. Bailey	– General Chairman, Edmonton
V. Linkletter	– Vice General Chairperson, Calgary

### **AWARD OF THE ARBITRATOR**

The grievor was hired on January 5, 2016 as an RTC. He became fully qualified on May 25, 2016. On November 7, 2016 the grievor was laid off as an RTC and transferred to Alyth Terminal (Calgary) where he worked as an Assistant Trainmaster. He was recalled as an RTC on February 20, 2017. The grievor had no discipline on his record prior to receiving a seven day suspension on March 22, 2017 for incorrectly voicing a TOP number contrary to CRO Rule 136.

#### **The 15 Day Suspension Grievance**

The grievor reported for his tour of duty as the 2300 Ontario North RTC on June 15, 2017. During the grievor's shift, the foreman called in to secure a track occupancy permit (TOP). The grievor voiced TOP 320 instead of the correct number, TOP 321. The foreman repeated back the TOP as 320. The grievor mistakenly confirmed back to the foreman that the number 320 was correct by underlining it on the authority screen. The foreman later called in to RTC Larocque to cancel TOP 320. RTC Larocque realized that TOP 320 had already been cancelled and notified Director Gillies. TOP 321 was then cancelled after the absence of an active TOP number 320 was confirmed.

A formal statement was taken on June 27, 2017. During the investigation, the grievor answered all the questions in a straightforward manner and attributed his error to a momentary attention lapse:

Q 29: Please try to explain how you would underscore the foreman's repeat of TOP 320 when the authority screen displayed 321?

A 30: I do not recall what led me to underscore TOP no. 321 when Foreman McKay voiced TOP 320. I presume it was a momentary attention lapse as I did not knowingly or intentionally underscore the incorrect TOP no. I should have caught my error in voicing the incorrect TOP number on the repeat as the safety measures are in place to prevent or catch of these types of errors.

On July 17, 2017 the grievor was issued a 15 day suspension.

The Union submits that the penalty is disproportionate given that other RTC employees have been treated more leniently for a similar breach of Rule 136. The Union cites, amongst others, the discipline levied against RTC LaChance who was first assessed a caution, then a five day deferred suspension, and then a 10 day suspension for a series of three successive Rule 136 violations between 2015 and 2017. The Union further cites **CROA 3581** where Arbitrator Picher states:

The jurisprudence is clear that like conduct should attract like discipline, and that it is not open to the company to impose invidious or discriminatory levels of discipline for what is essentially the same conduct as among several employees.

The Employer noted that this incident was the grievor's second violation in four months for the same type of offense of incorrectly voicing numbers, a task which is critical to his position and requires his undivided attention.

The arbitrator notes that the Union has a point with respect to the importance of maintaining a consistent approach in the disciplinary treatment of employees for similar workplace offences. Although 15 days may be considered excessive when compared to the other discipline cases cited by the Union, it is not so out of line when one takes into account the principle of progressive discipline, particularly in these circumstances where the grievor had committed the same offence just four months earlier and received a seven day suspension. In addition, there is the aggravating factor that the breach goes to the core of an RTC's duties of having to properly read and flawlessly repeat numbers as part of their assignment. It was incumbent on the grievor to be completely focussed on what he was doing. His failure to do so was a serious mistake and warranted the discipline imposed.

The 15 day suspension grievance is dismissed.

#### The Dismissal Grievance

On June 23, 2017 the grievor reported to his tour of duty as the 2300 Algoma RTC. The grievor was informed during his shift that that the crew of train 420 was stopped at the siding at Hurkett. The crew of the 420 was required to set off seven cars so that the cars could be loaded and then retrieved by the subsequent assignment. The grievor communicated with the crew of the 420 and provided them with the signal out at the siding to perform their work. The grievor understood during his ongoing discussions with the crew of 420 that they had performed their work and properly set off and secured the cars left in the siding. The grievor was subsequently required to give the

crew the authority to pass the stop signal. This authority allows the crew to leave the site.

The grievor noticed an occupancy in the siding after the crew had left the siding to return to their train. He contacted the 420 crew and inquired what was in the siding. The crew replied that they had set off seven cars in the siding, just as they had been instructed to do. The grievor further questioned the crew about why they chose to set off the cars in the siding rather than on the backtrack. The crew replied that they had been previously instructed to set off those cars at the siding, which is also where the cars were to be loaded.

The grievor accepted the crew's response, put up blocking and inputted this information into the Transfer Information Editor ("TIE") system. He did not ask any further questions of the crew. The crew in fact had left the seven cars in the siding with the handbrakes applied but with no additional secondary securement protection.

After the grievor's shift was completed at the 0700, the RTC arriving on shift at the Algoma desk read the information the grievor had previously inputted into the TIE that the cars were set off in the Hurkett siding. The incoming RTC noted that there was no information regarding whether a second method of securement had been applied to protect the equipment. A trainmaster was then dispatched by the RTC to confirm the cars were still in the siding. A portable derail was then transported to secure the equipment.

The Employer pointed out in its brief that the normal course of action when setting off cars is to set them off in the backtrack and not the siding, in order to prevent the blocking of a train meet. The Employer further pointed out that while the act of leaving equipment unattended and properly secured in a siding does not violate any work rules, it does result in operational inefficiencies. The Employer notes that the grievor admitted in his investigation that he understood that leaving unattended equipment in a siding was not normal process:

Q 26: Why did you accept their answer as to why cars were set off in the siding rather than the backtrack?

A 26: First of all, the answer that they were instructed to set off at Hurkett. Secondly, the fact that they were a qualified crew and told me that this is how the cars were loaded. My level of experience as a new Rail Traffic Controller also likely played a part in accepting their answer as they were confident in their response to my question and are qualified in the rules.

The Employer went on to submit that the Grievor's history of carelessness cannot be accepted in a position like an RTC's which requires a high level of care and responsibility. The grievor should have consulted with his supervisor, even in the face of the crew's instructions, given his understanding that leaving unattended equipment in a siding was not a normal process.

The Union pointed out that it is not alleged by the Employer nor is there any evidence that the grievor is guilty of any rules violation. The Union submits that it is the crew on the ground who shoulders the greater culpability for the June 24, 2017 incident and the grievor's only error was omitting to ask the crew about a secondary

securement. Significantly, the Union asserts that the grievor was honest during his interview about his inexperience as an RTC and properly explained why he did not question the more experienced crew any further about the absence of secondary protection.

The arbitrator does not accept the Union's proposition that this should not be treated as a disciplinary incident. The grievor's inexperience does not excuse him from having to be consistently aware and attentive to his obligations while on duty. The grievor questioned the crew once he noticed a light in the siding (Q/A 25). He was aware of the need for secondary securement and should have pressed the crew about the presence or absence of secondary protection. The RTC who took over after the grievor completed his shift immediately noticed the absence of any reference in the TIE and quickly dispatched a trainmaster to put in the secondary securement. Although no rule violation took place, nor did any accidents take place, the incident in my view does warrant a disciplinary response.

There are, however, several mitigating factors. First and foremost is the fact that the grievor did raise the question with the crew as to why the cars were set off in the siding rather than the backtrack. The grievor's mistake according to the Employer was to accept the word of the crew as to how the cars were to be loaded and his failure to probe the crew about its secondary method of protection.

In the arbitrator's view it was the crew, and not the grievor, that had the primary responsibility for applying the secondary securement. Indeed the evidence is that the crew had mistakenly considered the track to be "non-track" as opposed to "main track" and based their decision not to implement secondary securement on that misunderstanding. The fact that there is no reference in the RTC manual about the importance of secondary securement is also a mitigating factor as is the absence of a rule violation. I also consider the grievor's relative inexperience to be a mitigating factor given that he was relying on the judgment of an experienced crew in these circumstances. I accept the point of the Employer, however, that the grievor should have consulted with his supervisor once he noticed the track light in the siding and had spoken to the crew about their decision to leave the seven cars in the siding rather than the backtrack.

Although the incident is worthy of some discipline, I do not believe the grievor should have to pay the price of job loss particularly when the main fault for the incident lies with the crew of the 420. Although the grievor now has both a 7 day and 15 day suspension on his record, those incidents relate to his inattentiveness in repeating numbers, issues that are unrelated to this incident. I therefore accept the Union's submission that the Company has not demonstrated sufficient culpable behaviour that justifies termination despite the grievor's disciplinary record.

In the arbitrator's view, the proper disposition in these circumstances is a written warning. The letter of warning should set out the incident and the need for the grievor to



consult with his supervisor where he has any questions about the appropriate steps to be taken when an operational issue arises.

The dismissal grievance is upheld. The penalty of termination will be substituted with a written warning. The grievor shall be reinstated to his RTC position forthwith without loss of seniority and with compensation for all wages and benefits lost, less any mitigated earnings, since his date of termination. I will retain jurisdiction should any issues arise with respect to the implementation of this award.

February 21, 2018



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JOHN M. MOREAU, Q.C.  
ARBITRATOR