

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4618

Heard in Edmonton, March 14, 2018

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the assessment of 25 demerits, and subsequent discharge for accumulation of demerits, to Conductor K. Ochitwa of North Battleford, SK for his involvement in a derailment.

JOINT STATEMENT OF ISSUE:

On December 20, 2016, the grievor was involved in a derailment. The Company's investigation determined that Mr. Ochitwa violated Canadian Rail Operating Rules leading to the derailment and was assessed 25 demerits as a result. This brought his discipline record to 65 active demerits and subject to discharge for accumulation in excess of 60 demerits.

The Union's position is that discipline is excessive and the grievor should be reinstated with no loss of seniority, and with compensation for lost wages and benefits.

The Company disagrees with the Union's position.

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

FOR THE COMPANY:
(SGD.) M. E. Galan (for) K. Madigan
Vice President, Human Resources

There appeared on behalf of the Company:

M. Galan	– Labour Relations Manager, Edmonton
D. VanCauwenbergh	– Director Labour Relations, Toronto
W. Manning	– Transportation Supervisor, North Battleford
B. Kambo	– Labour Relations Manager, Edmonton

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
R. Donegan	– General Chairperson, Saskatoon
J. Thorbjornson	– Vice General Chairperson, Saskatoon
E. Allen	– Local Chairman, North Battleford
K. Ochitwa	– Grievor, North Battleford

AWARD OF THE ARBITRATOR

The grievor has been a Conductor for CN for nine years. The 25 demerits assessed in this case were for a violation of Rule 104 which governs switching. Mr. Ochitwa was on the front car of the train when it had to reverse over a crossover, on CN's main line, so as to drop off some cars in Lloydminster. The switcher is required to check both switches on the crossover by examining the points and by checking the target reflector or light, which shows either green or yellow.

What happened is not in dispute and Mr. Ochitwa immediately accepted that he was responsible. The train backed over the 2nd switch, which was set in the wrong position, damaging the switch. The grievor had cleared the movement with the Locomotive Engineer. The grievor did not become aware of the runover, and shortly thereafter directed the Locomotive Engineer to back up over the broken switch, causing a derailment. The derailment blocked CN's main line for some time.

There is no dispute this was a disciplinable offence. At the time the grievor had an accumulation of 40 Brown System points. The decision to assess 25 points resulted in his termination for exceeding the 60 point maximum.

The Union's position is that the discipline is excessive. The grievor had worked for CN for nine years at the time of the incident and is now 53 years old. As mitigating circumstances, the Union notes that this incident occurred late at night after nine hours

of work, in winter. The reason for the eleven car set off was that the locomotive units had been stalling, making it necessary to reduce the movement's overall weight.

The Union's submission is also that the grievor's record show that he can still respond to progressive discipline. It suggests he had been responsive to corrective discipline in the past, with no prior penalty exceeding 20 demerits, and significant discipline free periods.

The grievor's record involves the following incidents:

2016	3/30	20 Demerit Points	Violation of GOI 8.12.17; CROR 106 while working in North Battleford Yard on 03/31/2016
2015/08/26	8/26	15 Demerit Points	Failure of de-training greater than 4 mph working as the conductor on A41251 17 at North Battleford yard just prior to the derailment on August 19, 2015
2014/01/07	2/07	15 Demerit Points	Your failure under rule 115 to flange the track with the locomotives as well as to be in position to protect the point while shoving the TILX254420 through the snow resulting in the car derailing.
2013/07/20	7/20	10 Demerit Points	Failing to do a proper 1A brake test on cars being from upgrader lead at Lloydminster while working as the conductor on A41141-20
	6/16	20 Demerit Points	Failure to comply with GOI Section 8, Item 12.6, while working as Asst. Conductor on L50741-16 in Lloydminster, June 16, 2011
2011/04/26	4/26	15 Demerit Points	Failure to comply with C.R.O. Rule 104, while working as Conductor on L50741-26 in Lloydminster, April 26, 2011
2009/05/18	5/18	Suspension 2009/05/18- 2009/05/24	Failure to comply with C.R.O. Rule 104.5(b), C.R.O.R. General Rule A(iii), GOI Section 8, Item 1 – Item 3.1(c) and Item 3.1(g) and reckless behaviour resulting in damage to company equipment, while working as Conductor on L50741-17 in Lloydminster, May 17, 2009

The Union says the last two incidents (at the top of this list) resulted from efficiency tests not incidents. However, they nonetheless represent ungrieved discipline on the grievor's file. The Union also notes there are no cardinal rule violations.

The Employer emphasizes that the 2008 7 day suspension involved shoving railcars over a derail and damaging equipment. Further the 2011 incident was very similar to the current incident, reversing through a crossover improperly aligned. The August 2015 incident also involved a derailment.

I have reviewed **CROA 3000, 3750, 3299 and 3864** cited by the Employer along with **CROA 1517, 2366, 3839, 4498 and 4581** cited by the Union. That review leads me to conclude that the assessment of 25 demerits is in line with similar discipline in the past and not arbitrary or out of line with analogous cases.

This is not a case where I find mitigating factors that are sufficient to reduce the penalty imposed. In particular, the similar nature of the grievor's prior discipline suggest that discipline has not induced greater care. It is also significant that, despite the hour of the longish day, the grievor was in clear and direct view of the switch he failed to align properly. His failure caused a derailment blocking the main line. I find the penalty must stand. The grievance is therefore dismissed.

March 28, 2018



ANDREW C.L. SIMS, Q.C.
ARBITRATOR