

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

**CASE NO. 4634**

Heard in Calgary, May 8, 2018

Concerning

**ONTARIO NORTHLAND TRANSPORTATION  
COMMISSION**

And

**TEAMSTERS CANADA RAIL CONFERENCE  
MAINTENANCE OF WAY EMPLOYEES DIVISION**

**DISPUTE:**

The dismissal of C. Landriault.

**THE COMPANY'S EXPARTE STATEMENT OF ISSUE:**

On December 12, 2017, the grievor, Mr. C. Landriault, was issued a Form 200 advising him that he was dismissed from Company service due to a serious rule violation and gross misconduct, which occurred on November 30, 2017 while the grievor was working as a Track Maintenance Foreman, Matheson Section. The Company provided the grievor and the Union with a termination letter with additional details of the misconduct including that the grievor left the South Siding Switch at Val Gagne with the switch left in the reversed position, the lock unlocked and unprotected, and the keys dangling from the lock. This could have resulted in serious injury, death and/or significant damage to Ontario Northland Transportation Commission property. A grievance was filed.

The Union contends that mitigating factors existed, progressive discipline was not followed, that the grievor took full responsibility for his actions and that the discipline assessed was therefore unfair and excessive.

The Union requests that the grievor be reinstated into Company service forthwith without loss of seniority and with full compensation for all hours and benefits lost.

The Company contends that termination for cause was warranted due to the grievor's serious misconduct, and that the grievance therefore ought to be dismissed.

**THE UNION'S EXPARTE STATEMENT OF ISSUE:**

On December 12, 2017, the grievor, Mr. C. Landriault, was issued a Form 200 advising him that he was dismissed from Company service "due to serious rule violation and gross misconduct outlined in the attached (Termination) letter while working as Track Maintenance

Foreman, Matheson Section on November 30, 2017.” The Union disagreed and a grievance was filed.

The Union contends that mitigating factors (including employee health issues) existed that should have served to reduce the discipline assessed; the principles of progressive discipline were not respected; the grievor took full responsibility for his actions; the Company overreacted by assessing far more discipline than was appropriate in the circumstances; the discipline assessed was unfair and unwarranted.

The Union requests that the grievor be reinstated into Company service forthwith without loss of seniority and with full compensation for all hours and benefits lost.

The Company denies the Union’s contentions and declines the Union’s request.

**FOR THE UNION:**  
**(SGD.) W. Phillips**  
**Eastern Region Director**

**FOR THE COMPANY:**  
**(SGD.) G. Bailey**  
**Vice President Transportation**

There appeared on behalf of the Company:

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|------------------|---|
| G. R. Ryans      | – Counsel, Fillion Wakely, Toronto        |
| P. A. Lajeunesse | – Director Rail Infrastructure, Englehart |
| C. Mitic         | – Labour & Employee Relations Manager     |

There appeared on behalf of the Union:

|             |                                       |
|-------------|---------------------------------------|
| W. Phillips | – Director Eastern Region, Belleville |
| D. Brown    | – Counsel, Ottawa                     |
| G. Doherty  | – President, Brandon                  |

### **AWARD OF THE ARBITRATOR**

Carl Landriault, the grievor, commenced employment with ONTC, in August 2000, as an Extra Gang Labourer and ultimately rose to the position of Track Maintenance Foreman. Sometime prior to 2014, the Grievor was given the responsibility of relieving the Track Inspector, a non-union position.

On or about July 2, 2014, while relieving the Track Inspector, the Grievor reversed the position of a siding switch and left it in an unlocked and unprotected position with his security switch keys hanging from the lock. His error, a breach of CRO Rule 104, created a dangerous risk. By leaving the switch as he did, another passing train could have been diverted onto the siding with the prospect of either derailment or

collision. The risk was elevated in this case because the switch was in a “non-signaled” or “dark” territory without any cautionary signals. The Grievor’s error was not discovered until the following day when a freight train was traveling through and, although diverted by the switch, was able to avoid derailment and stop in time.

When the incident was investigated, the Grievor candidly acknowledged his conduct as “unacceptable” and was remorseful.

Because he was performing in a position outside of the bargaining unit, he was not disciplined in accordance with the terms and conditions of the Collective Agreement (Employer Exhibit; Tab 3). However, he was demoted from his position as Relieving Track Inspector and restricted from holding the position of Track Maintenance Foreman for a period of three months.

(The Union argues that both the above incident and the discipline imposed are not to be considered by me here, in that when it occurred the Grievor was doing non-bargaining unit work; and, as a result, there was no opportunity to either grieve the discipline imposed nor to fully explore and investigate the facts surrounding the same. While I accept that the incident does not form part of the Grievor’s record for the purposes of the Collective Agreement, the fact that it occurred and the circumstances surrounding it are nevertheless relevant in determining the appropriate penalty here.)

On November 30, 2017, while working as a Track Maintenance Foreman, the Grievor and his crew (Andrew Findlay and Kevin Lehman) attended at the South Siding switch at Val Gagne to perform cleaning duties. In the process of doing so, the Grievor borrowed Mr. Findlay's keys (he had forgotten his own at home) and turned the Val Gagne switch to the reverse position. Before leaving, he failed to return the switch to its normal position. When the Grievor and the crew left the area, the switch remained in the reverse position, unlocked and unprotected with the switch keys hanging from the lock. To underscore the similar circumstances to his previous misconduct, the switch in question was also located in dark territory which was absent of any cautionary signals - other than green/red ovals - to alert approaching trains.

The Grievor's error was discovered the following day when a freight train came through the area. The red ovals were noticed by an alert engineer who, fortunately, was able to put the train in emergency stop mode and, although it entered the siding tracks by one engine length, the train did not derail or strike any other train or equipment.

Once again, the Grievor's misconduct constituted a violation, *inter alia*, of CRO Rule 104 and created an extremely hazardous situation.

The Company points out that between the incident in July 2014 and November 2017, the Grievor had been trained on the CRO Rules on two occasions including, most recently, October 12, 2017 (6 weeks before the incident).

During the investigation which followed, the Grievor was, candid that he committed the error, accepted responsibility for his actions and expressed his regret both for his misconduct and his concerns for the enormous consequences that his mistake might have caused. He apologized to the men on the diverted train and expressed his appreciation for the fact that - in spite of the danger - no one was injured and no damage ensued.

The investigation also revealed that, at the time of the incident one of the crew, Mr. Lehman, had taken seriously ill and had to return to the truck. Mr. Lehman's condition was on the Grievor's mind at the time. After he had reversed the switch, he returned to the truck to attend to him and neglected to return the switch to its original position. Mr. Lehman's condition was serious. He remains off work today because of the same.

Leaving aside his misconduct while doing non-bargaining unit work in 2014, the Grievor's record consisted of a single incident in 2005 wherein he was disciplined 20 demerit points for insubordinate behaviour and refusing to perform an assigned task.

The Union argues that, given all of the circumstances, dismissal is too harsh a penalty and that I ought to use my discretion to substitute the same. The Company responds that given its mirror like repetition, and the possible serious consequences, dismissal is warranted.

The Union submitted a series of cases to support its position that discipline for a serious rule violation, while significant, should not result in dismissal (Union Exhibits; Tab 7). The Company did the same to support its position that dismissal in the circumstances here (taking into consideration an almost exactly similar violation three and half years earlier) was warranted (Company Exhibits; 11 -14).

I am cognizant of the very serious - and potentially fatal - consequences that might have ensued from the Grievor's misconduct; and, the fact that his conduct essentially mirrors the almost exact misconduct in 2014. I am satisfied that the circumstances warrant significant discipline to reflect the seriousness of the offense.

Taking into consideration: the principle of progressive discipline; the Grievor's service with the Company; his candor and acceptance of responsibility; the distraction caused by Mr. Lehman's illness; the fact that prior to November 30, 2017 the Grievor had sustained only one minor disciplinary assessment as a bargaining unit employee over a 17 year period; and, that there was no loss or damage involved in the same, that dismissal in the circumstances is excessive and a lengthy suspension be imposed in its place.

Accordingly, the grievance is allowed in part.

The Grievor shall be reinstated to his employment, without loss of seniority and without compensation for any wages or benefits lost. The intervening period shall be

recorded as a suspension. In addition, he shall be demoted from his position of Track Maintenance Foreman and not returned to the same until such time as the Company deems it appropriate.

I will retain jurisdiction to deal with the application, interpretation and implementation of this award.

May 18, 2018



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RICHARD I. HORNUNG, Q. C.  
ARBITRATOR