

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION  
CASE NO. 4635**

Heard in Calgary, May 8, 2018

Concerning

**CANADIAN PACIFIC RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE –  
MAINTENANCE OF WAY EMPLOYEE DIVISION**

**DISPUTE:**

Dismissal of Mr. G. Robinson.

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

On June 28, 2017, the grievor, Mr. Glenn Robinson, was dismissed from Company service for an alleged TOP violation on the Galt subdivision on June 5, 2017. A grievance was filed.

The Union contends that mitigating factors as outlined in the Step 2 grievance were not taken sufficiently into account; the discipline assessed was unfair, unwarranted and excessive.

The Union requests that the grievor be reinstated into Company service immediately, without loss of seniority, and under such conditions as the Arbitrator deems appropriate in the circumstances.

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

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

**FOR THE COMPANY:**  
**(SGD.)**

There appeared on behalf of the Company:

|              |                                      |
|--------------|--------------------------------------|
| W. McMillan  | – Labour Relations Officer, Calgary  |
| D. Pezzaniti | – Manager, Labour Relations, Calgary |

There appeared on behalf of the Union:

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

## AWARD OF THE ARBITRATOR

The facts are not in dispute. Glen Robinson (the Grievor) was dismissed on June 28, 2017 for his failure to work in a safe and sufficient manner.

On June 5, 2017, the Grievor, working as a Flagging Foreman held a Track Occupancy Permit (TOP) #125 on the north track of the Galt subdivision. This required him to flag for a contractor who was building a wall between the parking lot and the track. He was also required to issue sub-foreman protection to Mr. James Barrett (Union Exhibits; Tab 4). On the day in question Mr. Barrett held his own TOP while he was repairing a defective rail on the south track. Because the north and south track of the Galt subdivision are in close proximity, Mr. Barrett was required to take sub-foreman protection for the north track from the Grievor while he worked on the south track.

At approximately 1:30 PM, the Grievor called the RTC and cancelled TOP #125 without first contacting Mr. Barrett and ensuring his safety.

As reflected in Tab 4, the TOP that the Grievor called the RTC to cancel included a protection for Mr. Barrett. It required that, prior to contacting the RTC to cancel the TOP, the Grievor was first to verify that it was no longer required for each of the following: (1) "Track Units", (2) "Track Work"; and (3) "Sub-foreman". The TOP was specifically designed to compel the Grievor to check off those three boxes to both verify that he did so and to ensure that the proper safety steps were taken. Although he checked the box

to confirm that he contacted Mr. Barrett, he did not do so before he placed the call to the RTC to cancel the TOP.

Fortunately, during his call, the RTC raised the issue of whether or not the sub-foreman had been contacted. It then occurred to the Grievor that he had failed to do so. He had to terminate his call to the RTC in order to enable him to check with Mr. Barrett. After he had done so, he called back and resolved the issue with the RTC.

During the course of the investigation, the Grievor was contrite and candidly admitted his error in failing to follow the safety procedures necessary to protect the track as he was required to do. He allowed that he was aware that the boxes, noted above, were not to be checked until all the areas were clear. His explanation for checking the box to confirm that he had contacted the sub-foreman was simply that it was a "mistake". He allowed that he did not look at his written records to confirm that the sub-foreman was still protected and that, in failing to do so, he put the safety of the sub-foreman into jeopardy.

The primary rationale for his errors was an explanation which frankly begs credulity. He said that, at the time, he felt an urgency to relieve himself in the washroom but he was unable to use the port-a-potty next to his work site because it was in "really bad condition".

This was not the Grievor's first offence in this regard. As his disciplinary record reflects (Company Exhibits; Tab 4), he had eight previous disciplines over the course of his sixteen year career. His last discipline was on January 6, 2016 when, while working at the flagman position, he was issued a 30 day suspension for failure to work in a safe manner because he cancelled a TOP (#237) prior to cancelling the sub-foreman.

The Company argues that his previous record, along with the fact that the present case represented the second offence of the exact same nature - within a year and a half - illustrates that the discipline of dismissal which it imposed was reasonable in all the circumstances.

The Union argues that the penalty of dismissal is too severe compared to other cases (which it referred to in its submission) wherein discipline for TOP violations were not as severe.

Both parties provided case references in which to support their respective positions.

It is trite to say that each disciplinary review is dependent on its own circumstances. In this case, the Grievor had an unimpressive disciplinary record exacerbated by the fact that he had a 30 day suspension for the same offence levied within eighteen months of committing the present one.

I find it particularly egregious that he would have checked off the box (Union Exhibits; Tab 4) confirming that he verified the cancellation of the TOP with the subforeman (which he failed to do) prior to calling it in. In my view, it shows a disregard for the rules and the very safety obligations which his position required him to fulfill. This, coupled with his attempt to explain his conduct based on his inability to go to the washroom, significantly impacts on the Union's commendable attempt to argue mitigation of his penalty.

Nevertheless, I would be remiss if I failed to take into consideration his sixteen plus years of service; the obligation to apply discipline in a progressive manner so as to rectify similar behaviour rather than to punish it; the fact that he was candid and honest about his mistake; and the fact that his error was identified during the call to the RTC and rectified without the TOP actually being removed.

In the circumstances, I believe that the interests of all would be best served by allowing the grievance in part and providing the Grievor with one last chance to improve his workplace performance.

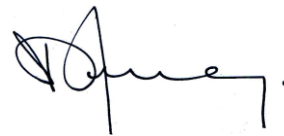
I direct that the Grievor be reinstated to his employment without loss of seniority and without compensation for wages and benefits lost. He is to be restricted to a position in which he has no responsibility for holding TOP's until such time as the Company deems it appropriate to change it. That said, in making this order, I am aware that because the

Grievor is being accommodated, finding a position which fits within the appropriate parameters may be more difficult.

The period between the Grievor's termination and the date of his reinstatement is to be recorded as a suspension for the events of June 5, 2017.

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

May 23, 2018



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RICHARD I. HORNUNG, Q.C.  
ARBITRATOR