

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

CASE NO. 4639

Heard in Calgary, May 10, 2018

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The assessment of twenty (20) demerits to Conductor Eric Nyberg of Vancouver, BC, for “Violation of CROR 115 and GOI 8.12.3 resulting in a collision with M30251-28 causing damage to tracks and locomotives”.

THE COMPANY’S EXPARTE STATEMENT OF ISSUE:

On October 28, 2016, Conductor Nyberg was assigned as the Helper on the 15:00 Thornton North Lead assignment in Thornton Yard. During this assignment, Helper Nyberg was responsible for protecting the point of his movement while a stretch of his movement was performed. Helper Nyberg confirmed the routing and communicated to his Foreman that he was good for forty (40) cars on the main. Helper Nyberg’s movement collided with the units of M30251-28 which were “parked” on the main.

The Company conducted an investigation and determined that Helper Nyberg had violated the above CRO Rule and General Operating Instruction and was deserving of the discipline of 20 demerit marks.

The Union submits that the discipline assessed was excessive and should be reduced.

The Company disagrees with the Union’s contentions.

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

**FOR THE COMPANY:
(SGD.) D. Crossan (for) K. Madigan
Vice President, Human Resources**

There appeared on behalf of the Company:

D. Crossan	– Labour Relations Manager, Prince George
K. Morris	– Senior Labour Relations, Edmonton
J. Thompson	– General Manager, Edmonton
M. Galan	– Labour Relations Manager, Edmonton
B. Kambo	– Labour Relations Manager, Edmonton
D. Houle	– Labour Relations Manager, Edmonton

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
R. Donegan	– General Chairperson, Saskatoon

J. Thorbjornsen – Vice General Chairperson, Saskatoon
M. Anderson – Vice General Chairperson, Edmore
E. Nyberg – Grievor, Vancouver

AWARD OF THE ARBITRATOR

The Grievor, Eric Nyberg (41), began his employment with the Company on October 21, 2013. He is married, with two boys ages four and seven.

On October 28, 2016 the Grievor was working as an Assistant Yard Conductor on a crew with Conductor Toth at the Thornton Yard. During his assignment, the Grievor was responsible for protecting the point while a stretch of his movement was performed. Conductor Toth was in charge of the bell pack and asked the Grievor for room to stretch toward the Grievor's location. The Grievor replied "*you're good for forty, forty nought cars on the main*". At this point, according to the Grievor, he inadvertently dropped his switch keys on the ground. While bending to pick them up he became preoccupied with an argument he had with his wife before leaving for work. While this was taking place, his Foreman continued stretching the movement. Approximately three minutes after the stretch began, the Grievor's movement struck the head end of train M30251-28. The locomotive on the Grievor's movement derailed. There were no injuries.

Following an investigation the Company assessed the Grievor 20 demerits for "*violation of CRO Rule 115 and GOI 8.12.3*". The Union grieved and argued that the disciplined assessed was excessive and should be reduced. The Company takes the position that the discipline was reasonable.

By his own admission the Grievor was in charge of the stretch. He should have been “*standing on the point*” which, he agreed, he was not. His failure to do that, and his failure to pay attention, resulted in the collision and derailment.

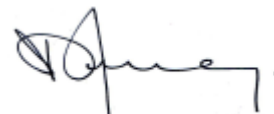
The Grievor’s record, between commencement of his employment and September 28, 2016 (the present discipline) consisted of eight disciplinary events comprised of three written reprimands, two suspensions and three demerit assessments.

Having reviewed the cases referred to me, it can be fairly said that the normal range of demerit points for similar misconduct is within the range of fifteen (15) to twenty (20) demerit points.

Given the Grievor’s unsatisfactory record; his failure to be on the point; his short service; and, the implausible explanation he provided for his conduct, I am led to conclude that this is not a case in which the penalty imposed by the Company should be interfered with.

The grievance is dismissed.

June 4, 2018



RICHARD I. HORNING, Q.C.
ARBITRATOR