

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

CASE NO. 4684

Heard in Calgary, May 14, 2019

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal on behalf of Locomotive Engineer L. Quenneville of Jasper, AB, concerning the assessment of forty (40) demerit points, and subsequent discharge for accumulation of demerits, for “not having a SLAM card. Alleged violation of General Rule A (xii) having your cellphone powered on while on duty and attempting to mislead a Company Officer by stating you did not have your cellphone while working as the LE on train Q10851-10 on November 11, 2018.

JOINT STATEMENT OF ISSUE:

On November 11, 2018 a Company Officer boarded the grievor’s locomotive which was stopped in a siding on the Edson subdivision. The Company Officer requested to see the grievor’s cellphone in order to ensure compliance of General Rule A (xii). The grievor stated he did not have his cellphone with him and left it at his home terminal, however the grievor eventually produced his cellphone from his pants pocket which was powered on. The grievor additionally did not have a SLAM (Stop, Look, Assess, Manage) sheet with him during the tour of duty.

Following an investigation on November 14, 2018 the grievor was assessed forty demerits on November 21, 2018 along with a discharge form for accumulation of demerits in excess of sixty.

The Union submits that the discipline assessed against the grievor was extremely excessive; the discipline for the SLAM sheet was in violation of the KVP principles; and the

Company could have educated or significantly reduced discipline for having his cellphone on duty.
The Company disagrees with the Union's contentions and denied the request.

FOR THE UNION:

(SGD.) K.C. James
General Chairperson

FOR THE COMPANY:

(SGD.) D. Houle (for) **K. Madigan**
Senior VP Human Resources

There appeared on behalf of the Company:

- D. Houle – Human Resources Business Partner, Edmonton
- K. Morris – Senior Manager, Labour Relations, Edmonton
- C. Bailey – Human Resources Business Partner, Vancouver

And on behalf of the Union:

- M. Church – Counsel, Caley Wray, Toronto
- K. C. James – General Chairperson, Edmonton
- M. King – Senior Vice General Chairperson, Edmonton
- T. Russett – Vice General Chairperson, Edmonton
- J. Doyle – Local Chairman, Jasper
- L. Quenneville – Grievor, Jasper

AWARD OF THE ARBITRATOR

The facts are not in dispute. The grievor was hired as a locomotive engineer out of Jasper on May 9, 2011. The grievor went on duty that day at 09:45. From 16:15 to 18:10, the grievor's train was stopped at Hargwen siding, located about 30 miles west of Edson. According to the grievor, he became fatigued during this time and decided to power on his cell phone to read an e-book in order to stay alert. He later put his cell phone away in his pocket. Trainmaster Wilcox boarded the locomotive while it was stationed in the siding to conduct an efficiency test. Trainmaster Wilcox described what occurred in a written memorandum submitted at his investigation:

“On November 11, 2018 I boarded to Q10851 – 10 train at Hargwen on the Edson sub. I asked to see the engineer Lee Quenneville's cell phone and Lee told me he didn't have a cell phone. So I asked again, He said no I didn't bring it to work, I left it in Jasper. I didn't believe him so I said can I see in your grip, employee showed me his grip with no phone. As I was calling his number he was reaching for something in

his back pocket of his pants and at the same time pulled out this cell phone. I confirmed it was turned on.

I asked why he was in violation of the rules and he had no reason. I also talked to him about the example he is setting with the junior employees working with him (new CNDR and a trainee) talked about how they probably look up to him as a sr. employee and it doesn't set a good example.

On the day in question I also asked Lee for his SLAM card in he didn't have one filled out."

During his investigation the grievor was asked the following questions:

Q17: Why did you tell supervisor Wilcox you left your phone in Jasper?

A17: I told Supervisor Wilcox I left my phone in Jasper because I knew that having it on my person was against the rules and I was trying to avoid the situation that I am in now.

...

Q19: What can I see and expect from you in regards to General Rule A (xii) and SLAM cards?

A19: First off I want to apologize for misleading the company officer Mr. Wilcox, my phone will be off and away from the moment I get to work to the moment I am off duty. Now that I fully understand the SLAM expectations I will fill one out every shift.

On November 21, 2018 the company issued a form 780 assessing the grievor's record with 40 demerits for:

Allegedly not having a SLAM card, alleged violation of General Rule A (xii) having your cellphone powered on while on duty and allegedly attempting to mislead a company officer by stating you did not have your cell phone while working as the LE on train Q10851-10 on November 11, 2018

The Company submits that the use of a cell phone can clearly distract an employee from any task and could have potentially grave consequences. The Company further notes that the grievor's job of a locomotive engineer is designated as a safety critical position. The Company also makes the point that the grievor was setting a poor

example in front of his crew by violating the rule. Further, his attempt to mislead the Company Trainmaster Wilcox into believing he did not have a cell phone on duty was a serious violation in itself. The grievor knew he was in violation of General Rule A (xii) and his actions demonstrated that he wanted to avoid the consequences of violating that rule.

The Union, for its part, characterizes the grievor's action as a momentary lapse of judgment which led to a rule violation. The Union underlines that the grievor has demonstrated remorse and vowed to refrain from ever having a cell phone on his person during a shift again. He was forthright during the investigation and acknowledged that his behavior was a violation of the rules. The grievor's initial reaction of failing to admit to having the cell phone on his person is a typical human reaction of trying to avoid admitting wrongdoing. Moments after his initial denial, however, the grievor admitted to having a cell phone on his person. Taken together, these facts indicate that the bond of trust has not been broken and that the grievor should be granted the opportunity to resume his duties as a locomotive engineer. This was the first incident of its kind involving a cell phone and the grievor has expressed his deep regret for the incident. A lengthy suspension is a sufficient penalty when all the circumstances are considered.

I find that the grievor's failure to fill out a SLAM sheet was not in my view cause for discipline. It was introduced as a hazard prevention tool for running trades. I accept that the rollout notice went out in July 2018 but training did not take place for longer service employees like the grievor until after December 2018. I further accept that the grievor

understood, as he indicated during his investigation, that it was sufficient for one member of the crew like the conductor did in this case to sign the SLAM sheet.

Turning to the more important issue regarding the cell phone use, I note that Arbitrator Picher in **CROA 4032** dealt with a similar case involving the possession and use of cell phones and other electronic devices. In that case, he reduced the penalty from 45 demerits to 30 demerits. He noted that employees must accept that any infractions involving the possession and use of cell phones, or other recreational devices while on the job, will be treated with severe levels of discipline. He states in that regard:

While each case must depend on its own facts, I am satisfied that in the instant case the assessment of the 30 demerits for the possession and use of a cell phone by the grievor while on duty would be sufficient to correct his behavior while also putting other employees on notice that such conduct will be dealt with seriously to the point of moving an employee with a clear record halfway to the point of discharge.

Although I understand and accept that the grievor regrets his actions over the incident, it is also clear that this office takes any violation of the rules relating to cell phones and other electronic device use on the job very seriously. The rule is very clear that the possession of cell phones while on duty is prohibited. They must be left powered off in the work bag of the employee if the device is brought to the workplace; or, otherwise, placed in a location where they are inaccessible. The grievor clearly defied the rule when he decided to read an e-book on his cell phone while waiting on the siding in his locomotive. This also set a bad example for his crew mates.

The Union has asked that the grievor be allowed another opportunity to demonstrate his value to the company through the imposition of a long suspension in lieu of termination for the accumulation of demerits. The 40 demerits imposed by the Company puts him over the threshold of 60 demerits.

I would be inclined to consider the Union's proposal but for the grievor's initial reaction when confronted by Trainmaster Wilcox. Had the grievor come clean at that moment and immediately confessed to having a cell phone on his person, I may have been persuaded to reduce the penalty to a suspension.

But the grievor did not readily admit to being in possession of a cell phone. It was only when Trainmaster Wilcox probed him for his cell phone number that the grievor knew he was cornered because his cell phone was left on in his back pocket. It was either admit at that point to having the phone in his possession or wait for the phone to ring in his pocket. This lack of candour at a critical moment in the conversation undermines any confidence one might have about the grievor's honesty going forward.

Honesty, of course, is a cornerstone of any employment relationship and particularly one such as in this industry where running trade employees like the grievor work with little supervision. Company rules such as those dictating the use of cell phones are critical to maintaining safety during a locomotive engineer or conductors' assignment.

The grievor, in the end, chose to be dishonest about having the cell phone in his possession. Premeditated fabrications of this kind have far-reaching consequences on the day-to-day bond of trust that underpins an employment relationship. I am not disposed under the circumstances to substitute a different penalty, despite the grave consequences to the grievor's career with the Company.

For all the above reasons, I must unfortunately dismiss the grievance.

May 28, 2019



JOHN M. MOREAU, Q.C.

ARBITRATOR