

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

CASE NO. 4715-B

Heard in Montreal, December 18, 2019

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the 7 day suspension of Conductor B. Matyas of Moose Jaw, SK.

JOINT STATEMENT OF ISSUE:

Following an investigation, Mr. Matyas was issued a 7 day suspension for: Connection with your tour of duty and the injury you sustained on April 30, 2016 while working as the conductor on train 403-30 in the Moose Jaw Yard. Failure to report your injury to a manager in a timely manner, a violation of Rule Book for Train & Engine Employees – Section 2 item 2.2 C (vi), (vii), (x), (xi) & (xii) and further failure to report to a manager the intent to seek medical attention on May 2, 2016 after being advised to do so, a violation of Train & Engine Safety Rule Book - CORE Safety Rules Item 1 Rights and Responsibilities.”

Union's Position:

The Company did not respond to all of the Union's grievances.

The Union contends the Company has failed to meet the burden of proof required to sustain formal discipline regarding the allegations outlined above. In the alternative, the Union contends that Mr. Matyas' 7 day suspension is unjustified, unwarranted and excessive in all of the circumstances, including significant mitigating factors evident in this matter.

The Union further contends that the penalty is in violation of the Canada Labour Code, has been assessed in a discriminatory manner, and contrary to the arbitral principles of progressive discipline.

The Union requests that the discipline be removed in its entirety, and that Mr. Matyas is made whole for all associated loss plus interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

Company's Position:

The Company disagrees and denies the Union's request.

The Grievor's culpability was established through the fair and impartial investigation. Discipline was determined following a review of all pertinent factors including the Grievor's service and discipline record. Further, before discipline was assessed the Company duly considered all mitigating and aggravating factors.

The Company cannot agree with the Union's contentions that the discipline assessed was in violation of the Canada Labour Code or that it was done in a discriminatory manner. Rather, the Company maintains that the discipline assessed was just, appropriate and warranted in all the circumstances. Accordingly the Company cannot see a reason to disturb the discipline assessed.

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

General Chairperson

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

Manager, Labour Relations

There appeared on behalf of the Company:

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| S. Shaw | – Senior Director, Labour Relations, Calgary |
| D. Pezzaniti | – Assistant Director, Labour Relations, Calgary |

And on behalf of the Union:

- | | |
|-------------|---|
| K. Stuebing | – Counsel, Caley Wray, Toronto |
| D. Fulton | – General Chairperson, Calgary |
| D. Edward | – Senior Vice General Chairperson, Medicine Hat |
| B. Wiszniak | – Local Chairperson, Moose Jaw |
| B. Matyas | – Grievor, Moose Jaw |

AWARD OF THE ARBITRATOR

1. On April 30, 2016, Brent Matyas (the "Grievor") was a Conductor on train 403-30 performing movements within the yard.

2. During the course of the same, the Grievor was riding on the outside of the car when he came into contact with a sign affixed to a switch stand mast. According to statements provided by his superiors, he climbed to the top of the ladder on the outside of the car to avoid being hit, but the sign brushed him on the back as passed by.

3. The Grievor described these events to his Supervisor, Mr. Whitney, as Mr. Whitney was driving him to the head of the train to finish the Grievor's trip to Swift

Current. According to Mr. Whitney, the Grievor was not hurt or injured nor was he at risk of being thrown from the car but rather the sign “*just brushed his pants*”. While it is clear that the Grievor reported the incident, there was no suggestion, at that stage, that he was injured.

4. A similar report was filed by Trainmaster Fraser on May 2, 2016 in which Mr. Fraser reported that he found the Grievor filling out a “*Marvin Report*” and confirmed that he had been struck by a sign. The Grievor filled out the form and then asked Mr. Fraser to accompany him so he could show him how close the sign was to the tracks. When he completed the report, he told Mr. Fraser that he had problems sleeping the night of the incident and that he was filling out the form at this stage for “*precautionary reason in case he was hurting more today*” (May 2). At no time did he say that he was reporting an injury. He was more concerned about the proximity of the switch post stand to the track.

5. On May 2, after completing two full tours of duty to his away from home terminal and following booking 5 hours rest at Swift Current and a further 24 hours rest at Moose Jaw, the Grievor then made his injury known to the Company.

6. In his Investigation Report, the Grievor allows that he did not report his injury to anyone between its occurrence and May 2 wherein he states he was: “*almost knocked off the car*”. I do not accept his description of the severity of his encounter with the sign. I accept the near contemporaneous statements provided to Mr. Whitney and Mr. Fraser.

7. Following the investigation, the Grievor was assessed a 7-day suspension (see Form 104 at Employer Tab 1).

8. Given the disparity between the Grievor's statements in his investigation and the information he provided to Mr. Fraser and Mr. Whitney, I can understand the skepticism with which the Company regard his explanation regarding his injury.

9. As noted in **CROA 4484** and **4598**:

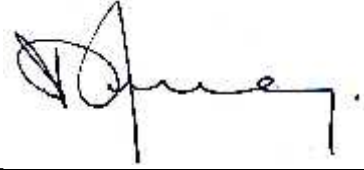
"The Grievor's decision not to report the incident once he realized it was causing or aggravating his pain denied the Employer a timely opportunity to investigate the incident for preventative purposes and to move immediately to assess the bona fides of the Grievor's claim."

10. The necessity to report an injury, according to the Company's Rules, is not in dispute. In this case, neither is the fact that the Grievor breached his duty in that respect.

11. I accept the evidence of Mr. Fraser and Mr. Whitney. Given his previous record a penalty more severe than a warning is appropriate. However, in these circumstances, I would reduce the penalty to a 3 day suspension.

12. The Grievance is allowed in part.

February 28, 2020

A handwritten signature in black ink, appearing to read "R. Hornung", written over a horizontal line.

RICHARD I. HORNUNG, Q.C.

ARBITRATOR