

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

## **CASE NO. 4723**

Heard in Montreal, January 16, 2020

Concerning

**CANADIAN PACIFIC RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

### **DISPUTE:**

Appeal of the dismissal of Conductor A. Blossom of Roberts Bank, BC.

### **THE JOINT STATEMENT OF ISSUE:**

Following an investigation, Mr. Blossom was dismissed as follows: "For failing to ensure the proper securement of your train as evidenced by failing to cut in the air and stretch the joint while working as a Conductor on train V94-23 on January 23, 2018. A violation of the Rule Book for Train and Engine Employees Section 2, Item 2.1(a)(b), 2.2 (a)(b)(c), Section 2, Item 2.3, CROR 113 Coupling Equipment.

Notwithstanding that the abovementioned incident warranted dismissal in and of itself, based on your previous discipline history; this incident also constitutes a culminating incident which warrants dismissal."

### **Union Position:**

The Union contends the Company has failed to meet the burden of proof required to sustain formal discipline regarding the allegations outlined above. The Union further contends the Company has failed to establish the abovementioned incident warranted dismissal, or that it constitutes a culminating incident worthy of discharge. In the alternative the Union submits Mr. Blossom's dismissal is unjustified, unwarranted and excessive in all of the circumstances, including significant mitigating factors evident in this matter.

The Union submits the Company has engaged in the unreasonable application of the Proficiency Test policy and procedures, resulting in the discriminatory and excessive assessment of discipline.

The Union requests that Mr. Blossom be reinstated without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

Company 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 his past discipline record. Further, before discipline was assessed the Company duly considered all mitigating and aggravating factors.

In regards to the allegations concerning proficiency testing, the Company maintains that it is in no way restricted from conducting a formal investigation based on the result of a failed proficiency test.

The Company's position continues to be 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:

- D. Pezzaniti – Assistant Director, Labour Relations, Calgary
- D. Guerin – Senior Director, Labour Relations, Calgary

And on behalf of the Union:

- K. Stuebing – Counsel, Caley Wray, Toronto
- D. Fulton – General Chairperson, Calgary
- J. Hnatiuk – Vice General Chairperson, Coquitlam
- W. Apsey – General Chairperson, Smiths Falls
- A. Blossom – Grievor, Port Moody

**AWARD OF THE ARBITRATOR**

1. As agreed with the parties and since a decision must be rendered no later than February 16, 2020, the decision is issued with reasons to follow.
2. CONSIDERING the evidence and the argumentation submitted by the Parties;
3. FOR REASONS to be provided at a later date;

4. **NOW THEREFORE**, the CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION:

- a. **ALLOWS** the grievance;
- b. **CANCELS** the dismissal;
- c. **REINSTATES** the Grievor into his employment forthwith, without loss of seniority and with compensation for all wages and benefits lost.

February 16, 2020



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**SOPHIE MIREAULT  
ARBITRATOR**