

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

CASE NO. 4759

Heard via Video Conferencing, September 8, 2020

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal on behalf of Conductor Chris Babij of Edmonton, AB, concerning the assessment of 25 demerits for "Failure of CROR 115 and CROR 114 when running through a switch not lined for the route while working on train U73581-30 September 02, 2019" and subsequent discharge for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On September 2, 2019, the Grievor was called to work on train SU73581-30 from Wainwright to Edmonton. During the tour of duty, the Grievor was required to set out cars at a customer facility. Upon arrival the Grievor was provided spotting instructions and an employee of the customer met him at the gate to assist the Grievor while inside the customer plant. The Grievor was told by the facility employee that his movement was lined into the plant and so he informed his Locomotive Engineer to shove back into the facility.

After moving approximately eight car lengths, the Grievor noticed a switch improperly lined and radioed the Locomotive Engineer to stop. Four cars ran through the switch and one axle of one railcar derailed when the slack adjusted after the movement stopped.

The Union's position is that the Grievor was unfamiliar with the customer plant and relied on the word of the customer's employee that the in-plant switches were lined for the movement. When he identified the mis-lined switch, he immediately instructed the Locomotive Engineer to stop. Unfortunately, the train did not stop in time to prevent running through the switch. The Union contends that the discipline assessed was excessive in the circumstances, particularly considering the subsequent automatic discharge for accumulation of demerits. The discipline should be reduced to a level short of discharge, and the Grievor's record made whole.

The Company's position is that the Grievor was required to ensure that switches were fully lined for his movement prior to informing his crewmate to shove back 30 cars and was required to stop his movement prior to passing a switch not properly lined. Discipline was warranted and, based on the Grievor's overall discipline record, 25 demerits was deemed an appropriate and a progressive response. The Company disagrees with the Union's contentions and has denied the request.

FOR THE UNION:
(SGD.) R. Donegan
General Chairman

FOR THE COMPANY:
(SGD.) D. Houle (for) **D. Klein**
Senior VP Human Resources

There appeared on behalf of the Company:

- V. Paquet – Manager Labour Relations, Toronto
- S. Blackmore – Senior Manager Labour Relations, Edmonton
- D. Houle – Human Resources Business Partner, Edmonton
- S. Ireland – Assistant Superintendent, Edmonton

And on behalf of the Union:

- M. Church – Counsel, Caley Wray, Toronto
- J. Thorbjornsen – Senior Vice General Chair, Saskatoon
- M. Anderson – Local General Chairman, Edmonton
- C. Babij – Grievor, Edmonton

AWARD OF THE ARBITRATOR

1. The facts are not in dispute. On September 2, 2019, the Grievor was the Conductor on train SU73581-30 which, during his tour of duty, was required to set out cars at a customer facility.

2. When the train arrived at the customer facility it was met, as was the practice, by a Pilot employed at the facility. The Grievor was provided spotting instructions to assist him while inside the customer plant. As the agreed to facts reveal:

The Grievor was told by the facility employee that his movement was lined into the plant and so he informed is Locomotive Engineer to shove back into the facility.

3. After moving approximately eight (80) cars, the Grievor noticed a switch improperly lined and radioed the Locomotive Engineer to stop. Four (4) cars ran through the switch and one rail car derailed when the slack adjusted after the movement stopped.

4. The Grievor admits in his investigation that (Q. 13):

...My mistake was assuming that we were lined up as that it what I was told. If I was not instructed by the plant Pilot, I would have walked up to verify all switches before starting my movement back.

5. It is apparent that the Grievor was aware that his duties required him to check the switches to verify them before starting the movement. He did not. His conduct in assuming that the switches were lined up by taking the word of the Pilot represented negligence on his part as well as a breach of the CROR and is clearly disciplinable.

6. The Grievor was assessed 25 demerits for his breach of the rules. And, because of his extended record, the 25 demerits exceeded the limit of 60 and he was dismissed.

7. Following the investigation the Grievor was dismissed (Union Tab 7 – Form 780).

8. The Grievor's discipline history reflects that he had accumulated 7 written reprimands and 150 demerits points and one suspension from the period of time that he worked with the Company beginning in 2007 to the date of his dismissal. The breach of CROR rules in this case involve the Grievor assuming that the information he received from another person was correct and therefore, simply put, caused him not to do his job.

9. His interview reflects that he knew that the appropriate thing for him to do was to walk back to verify the switches before starting his movement. He failed to do so. That failure falls entirely on his shoulders and warrants discipline. While, ordinarily, I would not find the discipline unreasonable given his record, I am satisfied that the mitigating circumstances are such that the Grievor should be given a last chance opportunity.

10. In addition to his service, the mitigating factor to be weighed in this case is that he allowed himself to be misled by the “accepted” process at the plant which involved a Pilot assisting him with lining the switches and train.

11. Having considered all the circumstances, I am of the view that the appropriate penalty is for the Grievor to have his demerits reduced to 55; and, that he be reinstated without payment of any compensation or benefits but without loss of seniority.

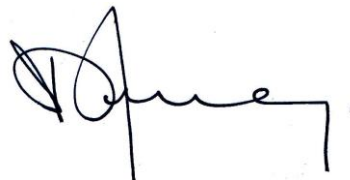
12. In addition, the Grievor will be subject to the following terms and conditions:

(a) Prior to return to active service the Grievor will be required to successfully complete a screening interview with his local manager concerning his ongoing employment. The purpose of this interview will be to review the Company’s ongoing performance expectations regarding the Grievor’s return to work and to provide a full understanding and clarity regarding these expectations.

(b) The Grievor’s employment with the Company will be in jeopardy if he commits a future offense for which discipline is warranted within the next two (2) years.

(c) This determination should be understood to be a last-chance opportunity to show his employer that he can work in a compliant and safe manner as required by his position.

September 21, 2020



**RICHARD I. HORNUNG, Q.C.
ARBITRATOR**