

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

CASE NO. 4769

Heard via Video Conferencing in Montreal and Calgary, March 9, 2021

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the assessment of 15 demerits, for “failure to comply with 8960 – G1.2 items (iv) – (v), G2.12 (v) and G3.9 items 6-7, that resulted in the train separation while operating train M30251-22 on March 23/19 on the Ashcroft Subdivision. A train separation occurred in the vicinity of mile 49.7 at Ashcroft”.

JOINT STATEMENT OF ISSUE:

On March 23, 2019, while in the process of attempting to make a controlled stop, the grievor’s train suffered a separation.

The Company investigated the incident and determined that Mr. Flack was in violation of Form 8960 G1.2 items (iv) – (v), G2.12 (v) and G3.9 items 6-7, that resulted in the train separation. The Company subsequently assessed Mr. Flack with 15 demerits.

The Union’s position is that the assessment of 15 demerits is excessive and unwarranted and requests that the Company reconsider its position and replace the discipline with a coaching letter to reflect the discussion and understandings reached during the investigation.

The Company disagrees with the Union’s position.

FOR THE UNION:

(SGD.) M. King (for) **KC James**
General Chairperson

FOR THE COMPANY:

(SGD.) S. Blackmore (for) **D. Klein**
VP Human Resources

There appeared on behalf of the Company:

V. Paquet	– Manager Labour Relations, Toronto
S. Blackmore	– Senior Manager Labour Relations, Edmonton
F. Daignault	– Senior Manager Labour Relations, Montreal
S. Grewal	– Senior Manager Engine Service, Edmonton
J. Butz	– Engine Service Officer, Melville

And on behalf of the Union:

M. Church	– Counsel, Caley Wray, Toronto
KC James	– General Chairperson, Edmonton
M. King	– Senior Vice General Chairperson, Edmonton
R. Russett	– Vice General Chairperson, Edmonton

R. Koffski
J. Flack

– Vice General Chairperson, Kamloops
– Grievor, Kamloops

AWARD OF THE ARBITRATOR

The grievor was hired as a Conductor in August 2007 and qualified as a Locomotive Engineer in 2014.

On March 23, 2019 the grievor was operating his Key train, containing 121 cars, from North Bend to Kamloops in a straightaway service via the Thompson and Ashcroft subdivisions. During his tour of duty, the grievor was operating on a clear-to-stop signal which required him to bring his train to a stop at the Ashcroft west signal 480. While approaching the Ashcroft west signal, the grievor reduced his throttle to idle and began to apply a light dynamic brake in preparation for a controlled stop. At the same time, the grievor was communicating with train 863, with a track foreman, and with the RTC. While attending to those conversations, the train came to stop.

The train began to creep backwards 38 seconds after it had come to a stop. Once the grievor realized his train was moving backwards, he increased the dynamic brake from a position 2 to position 6 in order to stop it from rolling down the 0.3% grade. The grievor also applied the independent brakes on the locomotive. The train stopped rolling once the independent brakes engaged but tensile forces continued to generate between the cars on the downward grade and the stationary locomotive. Some 20 seconds later, the train went into emergency. The emergency brake application was caused by a broken

knuckle on the 77th car. The broken knuckle caused the 77th car to separate completely from the coupled car immediately in front of it, breaking the train's air hose line.

The Union noted from the outset the complete absence of evidence regarding the condition of the knuckle. (During the arbitration hearing, the Company maintained that the broken knuckle was likely left on the side of the track given its weight and distance from the engine). The Union submits that it remains unknown and unproven that the knuckle was in fact in proper operating condition and not compromised by rust or general stress. The Union pointed out that the Conductor, who in fact attended to fixing the broken knuckle, mentioned in his statement that *"there was plenty of rust along the breaking point, and it was only a portion of the break that was fresh. The majority of the break was rusted..."*.

The Union further submits that the evidence on the condition of the damaged knuckle is essential to proving the grievor's culpability. Given the speed at which the train was travelling, it is unlikely that a sudden stop in these circumstances would cause the knuckle to separate if it was in proper working order. The Union noted in that regard that the grievor initially applied minimal braking effort in order to bring the train to a stop. When the train rolled back, the download indicates it was only travelling at 1 mph down the 0.3% grade. The Union also pointed out that the other knuckle joints on the train properly held after the train was stretched and that the separation occurred only when the grievor applied the brakes. In the Union's view, the fact the knuckle did break indicates that it is more likely than not that it was in a rusted and otherwise poor condition where a break was inevitable.

In the end, the Union submits that the Company has not established that the grievor's actions caused the train separation. At worst, the grievor's violations of failing to plan for a stop and failing to apply the appropriate brakes to prevent a roll-back, which are not operating rule violations but rather violations for practices set out in the Form 8960 of the Locomotive Engineer Manual, should only have attracted counselling or a warning letter; not 15 demerits.

The grievor acknowledged breaching Section G1.2, items (iv) and (v), of the Locomotive Engineer Operating Manual under the heading TRAIN HANDLING: this Policy will standardize the best practices for train handling throughout CN. However, it is not possible to document every situation that a locomotive engineer may encounter. To operate trains according to CN Principles of safety, service and asset utilization, locomotive engineers must apply their knowledge, skill and professional judgement during the course of their duties:

The following general practices apply throughout this policy:

- i. Use forward planning for planned stops and speed control.
- ii. Make only incremental / gradual throttle and brake adjustments.
- iii. Control speed using throttle manipulation to the greatest extent possible.
- iv. Select and adjust the throttle, dynamic brakes, and air brake in a manner which minimizes in-train and track-train forces.
- v. Allow slack to gradually adjust within the train before increasing throttle, dynamic brake, or air brake applications.

The Arbitrator notes that the grievor himself admitted at his investigation that he was busy talking to train 863, a foreman and an RTC and *"wasn't trying to stop the train when it did stop"*. (Q/A 17); and, *"that it wasn't my plan to stop there. I was trying to get up the hill more"* (Q/A 18). The download indicates that the unplanned roll back of the train occurred 38 seconds later. The grievor reacted to the sliding movement by ramping up his dynamic brake from position 2 to position 6, followed immediately by an application of the independent brake.

The dynamic brake, as the Company pointed out, only provides a retarding force on the locomotive. The uncontradicted evidence is that the effect of ramping up the dynamic brake and then applying the independent brake has the effect of holding the locomotive to that anchored spot. The retarding force behind the fixed locomotive at the head end generates increasing draft forces causing the train cars to continue rolling away from the anchored locomotive. In the arbitrator's view, it is proper to draw the inference that it was these draft forces and not a rusty knuckle which ultimately caused the break at the 77th car, which the evidence has demonstrated is the weakest link of the movement. The arbitrator is reinforced in this view given that this lengthy KEY train with 121 cars had already travelled some 76 miles that day without incident. The incident merits a disciplinary response.

In terms of penalty, there is no dispute that the grievor breached the TRAIN HANDLING policy. He should have left it to his Conductor to deal with the RTC and the others, or simply waited for an appropriate time to do so. As Arbitrator Hornung stated in **CROA 4671**:

"In effect, it can hardly be a defense of the kind of breach raised by this grievance, that the Grievor was too busy doing his job to recognize the existence of the flag in question."

The grievor has a disciplinary record which currently stands at 35 active demerit points with several documented instances of rules violations as a Locomotive Engineer. It includes a 12-day suspension in September 2015 for passing a stop sign; and, further rule violations a year later in September 2016. The 2016 violations resulted in a 6-day

suspension and an 18-month restriction from operating as a Locomotive Engineer. The grievor was also required to attend an air brake and train handling refresher course.

As noted in **CROA 4416**, a similar case involving the separation of trains at the knuckle, the issue here is “...*not about the grievor’s culpability it is about the appropriate sanction that should be levelled against her*”. In that case, the Arbitrator upheld the disciplinary penalty of 20 demerits. See also: **CROA 3839**. After reviewing the circumstances leading up to the uncoupling of the train, and bearing in mind the grievor’s past record for rule breaches as a Locomotive Engineer, I do not find the assessment of 15 demerits to be out of line with the other authorities of this Office involving instances of inadequate train handling.

For all the above reasons, the grievance is dismissed.

March 22, 2021



JOHN M. MOREAU
ARBITRATOR