

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

CASE NO. 3711

Heard in Montreal, Tuesday, 9 December 2008

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Discharge of Conductor Grant Robinson of Melville Saskatchewan on February 07, 2008.

COMPANY'S STATEMENT OF ISSUE:

On January 14, 2008 the grievor was working as Conductor on train Q105 operating between Rivers Manitoba and Melville Saskatchewan. During the tour of duty the grievor's train was stopped to make a meet with an opposing train at a station known as Code. As the opposing train passed the grievor at Code he failed to detrain from his locomotive consist in order to perform an inspection of the passing train.

Later during the same tour of duty, a transportation supervisor entrained the lead locomotive and observed that the grievor was not wearing his safety footwear and in addition the Supervisor observed an openly displayed newspaper located on the cab of the locomotive.

Following a formal investigation, the grievor's discipline record was assessed with 15 demerits for failure to comply with CROR. rule 110, General Rule A (xi) and GOI section 8, Item 4.3.1 when working as conductor on train Q10531-12 on January 14, 2008.

Due to an accumulation of demerits the grievor was discharged from service

The Union contends that: **1.)** The newspaper did not belong to the grievor and he was not reading the paper; **2.)** The grievor removed his boots because his feet were wet; **3.)** The grievor is a long service employee; **4.)** The grievor provided reasonable explanations regarding these operating rules infractions.

The Union requests that the Company mitigate the discipline to a period of a suspension The Company has denied the union's request.

FOR THE COMPANY:

(SGD.) K. MORRIS
VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

- P. Payne – Manager, Labour Relations, Edmonton
- D. Van Cauwenbergh – Director, Labour Relations, Edmonton
- C. Tytgat – Assistant Superintendent, Calgary

And on behalf of the Union:

- M. Church – Counsel, Toronto
- R. A. Hackl – Vice-General Chairman, Saskatoon
- D. Timmerman – Observer
- G. Robinson – Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that Conductor Robinson did fail to comply with CROR 110 as well as the General Rule and General Operating Instructions, as alleged. He failed to reasonably attempt to see whether he could stand on the ground to perform a roll-by inspection of another train, removed his safety boots while in the cab of his locomotive and apparently failed to remove a newspaper which he says was left in the cab by another crew, contrary to Company rules. The real issue in these proceedings is whether these events, which all occurred during the course of a single on-the-job inspection by Assistant Superintendent Cameron Tytgat, merit the grievor's discharge.

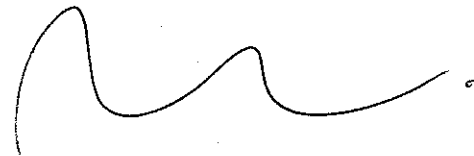
The Arbitrator understands the Company's perspective. The grievor's record, particularly in his early years of employment, is less than impressive with respect to safe practices and operating rules. At the time of the incident, on January 14, 2008, Mr. Robinson's record stood at forty-five demerits, so that the assessment of fifteen demerits placed him in a dismissible position.

However a close examination of the grievor's work history, and a comparison to other cases relied upon by the Company in its submissions to the Arbitrator, does suggest that there is some room for mitigation in the case at hand. In the early years of the grievor's employment, particularly during the 1990s, there were a number of violations of operating rules, sometimes resulting in collisions and derailments which attracted substantial discipline. From 1998 forward, however, with one exception in 2005, that performance appears to have improved, although discipline was incurred for some non-operating infractions. However, when the performance of the more recent years is examined, the Arbitrator is compelled to conclude that the grievor is not in as grave a circumstance as the employee in **CROA 3000**, whose discharge was sustained after a similar length of service, as in that case the precipitating incident was in fact a side collision and derailment. In the instant case the Company would terminate the grievor based on the fact that the grievor conducted a pull-by inspection of another train from aboard his locomotive rather than on the ground, as is required by the rule, that he temporarily failed to have his safety boots on and that he had not disposed of a newspaper apparently brought aboard the locomotive by an earlier crew. While I am satisfied that each of these incidents is properly the subject of discipline, on the whole I am not persuaded that the grievor should not be afforded a last chance opportunity to demonstrate that he can work in compliance with operating rules and Company regulations.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without

compensation for any wages and benefits lost. His disciplinary record shall stand at forty-five demerits and a suspension shall be substituted for the period of time between his termination and reinstatement.

December 15, 2008



**MICHEL G. PICHER
ARBITRATOR**