

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3299**

Heard in Calgary, Tuesday, 12 November 2002 & Thursday, 13 February 2003

concerning

CANADIAN PACIFIC RAILWAY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

The assessment of 25 demerits to Mr. E. Labrie and his subsequent discharge for accumulation of demerits.

JOINT STATEMENT OF ISSUE:

On July 2, 2001, Mr. Labrie provided the Company with a formal statement with respect to a sideswipe in the Calgary Intermodal Terminal yard.

On July 24, 2001 Mr. Labrie was issued 25 demerits for his alleged responsibility in the sideswipe. As a result of that assessment, Mr. Labrie was dismissed for accumulation of demerits under the Brown system of discipline.

The Union's position is that sufficient mitigation exists to warrant removal of the discipline. The Union requests that the discipline imposed be removed and that Mr. Labrie be reinstated without loss of seniority and benefits, and with payment of lost wages. In the alternative, and in any event, the penalty of dismissal should be mitigated.

The Company declined the grievance.

FOR THE COUNCIL: FOR THE COMPANY:

(SGD.) L. O. SCHILLACI (SGD.) C. M. GRAHAM

GENERAL CHAIRPERSON FOR: GENERAL MANAGER, OPERATIONS

On November 12, 2002, there appeared on behalf of the Company:

J. Copping – Manager, Labour Relations, Calgary

C. Carroll – Director, Labour Relations, Calgary

T. Schumacher – Manager, Operations, Calgary

C. Thorne – Intermodal Operations Coordinator, Calgary

And on behalf of the Council:

M. A. Church – Counsel, Toronto

L. O. Schillaci – General Chairperson, Calgary

D. H. Finnson – Vice-General Chairperson, Calgary

E. Labrie – Grievor

At the request of the parties, the Arbitrator adjourned the hearing *sine die*.

On February 13, 2003, there appeared on behalf of the Company:

J. Copping – Manager, Labour Relations, Calgary
 C. Graham – Labour Relations Officer, Calgary
 D. Freeborn – Labour Relations Officer, Calgary
 T. Schumacher – Manager, Operations, Calgary
 C. Thorne – Intermodal Operations Coordinator, Calgary

And on behalf of the Council:

M. A. Church – Counsel, Toronto
 L. O. Schillaci – General Chairperson, Calgary
 D. H. Finnson – Vice-General Chairperson, Calgary
 W. G. Scarrow – Vice-President, UTU, Ottawa
 E. Labrie – Grievor

AWARD OF THE ARBITRATOR

This is a grievance against discharge. As a result of a cardinal rules infraction committed by the grievor on June 26, 2001 the Company assessed twenty-five demerits against his record. As his record previously stood at forty-five demerits, that discipline resulted in his discharge. There is no dispute between the parties that the grievor was guilty of a cardinal rules infraction. The only issue in this arbitration is the quantum of penalty.

The grievor is not a long-service employee. Although he was hired in September of 1994, when layoffs are taken into account he accumulated little more than 4.5 years of active service. Unfortunately during that time the grievor amassed a very unenviable discipline record, having received discipline on nine separate occasions prior to the culminating incident which is the subject of this arbitration.

On the evening of June 25 and the morning of June 26, 2001 Mr. Labrie was working as the yard foreman on a two man crew in the Calgary Intermodal Terminal. Among the assignments given to him was the shoving of cars into tracks U8 and U9 of that yard. Mr. Labrie first shoved cars into track U8 without riding the point of the movement. Unbeknownst to him the consist of cars went beyond the west end of the track and fouled the adjacent lead. Shortly thereafter he shoved a cut of cars into track U9. Again, he did not ride the point and the length of the consist in question was longer than the track could hold. As a result the cars pushed into track U9 proceeded out over the switch at the west end of the track, and onto the lead where they collided with the cars which had improperly exited track U8. The collision caused the derailment of one car and substantial damage to cars and containers.

During the course of the Company's investigation the grievor explained that he believed that both tracks U8 and U9 could handle the cars he was pushing into them. He was obviously wrong in that assumption, and plainly proceeded in violation of CROR rule 115 which states, in part:

115 Pushing equipment

(a) When equipment is pushed by an engine, a crew member must be on the leading car or on the ground, in a position to observe the track to be used and to give signals or instructions necessary to control the movement.

EXCEPTION: A crew member need not be so positioned when the portion of the track to be used is seen or known to be clear.

It is also not disputed that the grievor's actions resulted in a violation of CROR rule 104(k) with respect to the proper lining of switches.

It appears that the Intermodal Operations Coordinator responsible for the grievor's work that night may have told Mr. Labrie that the cars assigned for placement in track U9 would in fact protrude past the west end of the track onto the lead. The supervisor's recollection is that he did so advise the grievor, although Mr. Labrie has no recollection of being given any such advice. However the state of that evidence may be, it can have no bearing on the obvious and undisputed fact that the grievor violated the cardinal rules cited above, and that his violation of those rules resulted in the collision which ensued.

Are there any mitigating circumstances which would justify a reduction of penalty in the case at hand? The Arbitrator can see none. In the relatively short period of his service the grievor amassed an extremely negative disciplinary record. Between October of 1997 and February of 2001 inclusive he was assessed demerits on six occasions, in addition to receiving cautions or informal discipline three other times. Perhaps most significantly, the collision and derailment of June 26, 2001 constituted the fourth serious rules infraction committed by Mr. Labrie in the eight month period between October of 2000 and June of 2001. Incidents in October and December of 2000 and February of 2001 all involved rules violations by the grievor resulting in collisions, side swipes and/or derailments.

On behalf of the grievor it is argued that he has learned from the incident which resulted in his discharge and that he has matured considerably as a result. However, this Office is bound to respect the principles of progressive discipline and the overall integrity of the Brown System of discipline administered by the Company. In the case at hand the grievor, a twenty-seven year old employee with limited service, was made the subject of progressive discipline over a period of several years, without any significant improvement in the quality of his work. In the circumstances it is difficult for the Arbitrator to dismiss out of hand the legitimate concerns of the Company with respect to the ongoing safety of its operations in the event of the continued employment of Mr. Labrie. It is well recognized that the system of progressive discipline can operate for the benefit of an employee. However, it should likewise be available to protect the employer, particularly where the record of an employee demonstrates adherence by the Company to graduated measures of discipline over time, calculated to assist the employee in correcting his or her behaviour. Unfortunately, that care and patience on the part of the Company in the instant case did not prove successful. Nor is there any medical or other documentary evidence before the Arbitrator which would explain the grievor's record and support a reduction of penalty. While it may be, as the grievor asserts, that he has now matured, on what basis can the Company be expected to assume any further risk of collisions and derailments?

In all of the circumstances the Arbitrator can find no compelling basis upon which the assessment of twenty-five demerits, which I deem to be within the appropriate range of discipline, should be reduced, or the grievor's termination rescinded. For these reasons the grievance must be dismissed.

February 17, 2003

(SIGNED) MICHEL G. PICHER
ARBITRATOR